

ALEXANDER NEIL KALMAN - April 21, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FRANCISCO CANTU and NORBERTO § CIV A. NO: 5:19-cv-00615
ELIZONDO, individually and on §
behalf of all others § JURY TRIAL DEMANDED
similarly situated, §
§ CLASS/COLLECTIVE ACTION
Plaintiffs, § PURSUANT TO 29 U.S.C. § 216(b)/
§ FED. R. CIV. P.23
-vs- §
§
MAMMOTH ENERGY SERVICES, INC. §
d/b/a, COBRA ENERGY and §
HIGHER POWER ELECTRICAL, LLC, §
§
Defendants. §

ORAL DEPOSITION
ALEXANDER NEIL KALMAN
APRIL 21, 2022

ORAL VIDEOTAPED DEPOSITION OF ALEXANDER NEIL KALMAN, produced as a witness at the instance of the Plaintiffs and duly sworn, was taken in the above-styled and numbered cause on April 21, 2022, from 9:32 a.m. to 1:13 p.m., before Trena K. Bloye, Certified Shorthand Reporter in and for the State of Oklahoma, reported by computerized stenotype machine at the offices of D&R Reporting & Video, Inc., 400 N. Walker Ave., Ste. 160, Oklahoma City, Oklahoma 73102, pursuant to the Federal Rules of Civil Procedure and under the following agreement of counsel for the respective parties that:

The deposition may be signed by the witness before any notary public or officer authorized to administer oath.

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1 VIDEO OPERATOR: Good morning. We are on
2 the record. Will the court reporter please swear in
3 the witness.

4 (The witness was sworn.)

5 COURT REPORTER: And, Counsel, would you
6 please introduce yourselves for the record.

7 MR. MOULTON: Good morning, this is David
8 Moulton for the Plaintiffs.

9 MS. VILLASEÑOR: And Erin Villaseñor for
10 the firm of Porter Hedges for Defendant.

11 COURT REPORTER: All right. Go ahead,
12 Mr. Moulton.

13 MR. MOULTON: Can we -- I'm sorry. Did
14 you swear in the witness already?

15 COURT REPORTER: I did, yes.

16 MR. MOULTON: Okay. Thank you.

17 ALEXANDER NEIL KALMAN,
18 after having been first duly sworn at 9:32 p.m., deposes
19 and says in reply to the questions propounded as
20 follows, to wit:

21 EXAMINATION

22 BY MR. MOULTON:

23 Q All right. Mr. -- is it Kalman or Kalman? I'm
24 sorry.

25 A Kalman.

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1 Q Kalman. Okay. Mr. Kalman, my name is David
2 Moulton. I represent about 150 linemen and mechanics
3 who are claiming overtime pay against Mammoth d/b/a
4 Cobra and Higher Power.

5 Have you ever -- have you and me ever talked
6 before? Do you know me?

7 A I have talked with somebody who did the
8 subpoena. I am not sure if it was you directly or
9 another lawyer.

10 Q Okay. So you spoke with someone about coming
11 here today to schedule your deposition?

12 A Yes.

13 Q Did you have any conversations with me or
14 anyone at my firm about the details or facts of this
15 case?

16 A Just that it had to do with the PREPA Puerto
17 Rico situation.

18 Q Okay. Now, could you -- for the record, could
19 state your full name for the record, please?

20 A Yes. Alexander Neil Kalman.

21 Q And what is your date of birth, sir.

22 A August 18th, 1987.

23 Q And what is your current address?

24 A Current address is 7704 Northgate Avenue,
25 Oklahoma City, Oklahoma, 73162.

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1 Q And for how long have you lived at that
2 address?

3 A It has been since, I believe September of 2020.

4 Q Okay. And where do you currently work right
5 now?

6 A I currently work for OMES with the State of
7 Oklahoma.

8 Q And where is your work address?

9 A It is the data center on Lincoln. I don't have
10 the exact address in my memory. I can get that for you
11 if you need it.

12 Q That's okay. So what's the street name?

13 A Lincoln.

14 Q Lincoln. It's the data center on Lincoln in
15 Oklahoma City?

16 A Yes.

17 Q Okay. What's your cellphone number?

18 A Cellphone number is 405-863-6108.

19 Q Do you use any other phone -- other cell
20 numbers?

21 A I have one for the state. I only use it for
22 state business, nothing personal.

23 Q Okay. Can we get that number?

24 A Yes. I do not have it on me. I leave that
25 cellphone at work.

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1 Q Oh, okay. All right. That's fine. And you
2 use -- you'll only use that phone for state business?
3 You don't use it for personal reasons or for other
4 reasons?

5 A Correct. I have a personal phone and then I
6 have a work phone that I leave at the office, but it is
7 technically a cell.

8 Q Do you happen to know your office phone number?

9 A I do not have an office phone other than that
10 cellphone.

11 Q Got it. Have you, within the last year or so,
12 have you spoken with anyone that was affiliated with
13 Mammoth or Cobra or Higher Power about this case at all?

14 A Mark Layton has called me twice in the leadup
15 to this deposition. But, otherwise, no, I am under a
16 cease and desist not to contact any Mammoth employees.

17 Q Okay. Let's kind of unpack that. Mr. Layton,
18 that's Mark Layton; correct?

19 A Yes.

20 Q He's called you twice?

21 A Yes.

22 Q Did he just try to talk to you or did you all
23 actually talk?

24 A He called to offer me representation by Mammoth
25 legal counsel twice. And during the first call he also

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1 asked if I would be willing to talk with legal
2 representation on the phone.

3 Q Okay. And what did you say?

4 A No.

5 Q Other than offering legal representation to you
6 and asking you to speak with the lawyers for Mammoth on
7 the phone, did you all speak about anything else?

8 A I reminded him of the nature of my termination
9 with Mammoth; but, no, nothing else.

10 Q Okay. And so what was the nature of your
11 termination with Mammoth?

12 A I was laid off after site closures and then my
13 severance was denied.

14 Q Why was your severance denied?

15 A They claimed that I destroyed inappropriate
16 documentation. They did not give me specifics.

17 Q Okay. And when you say "they," who was it who
18 told you that the reason for your severance being denied
19 was because of document destruction?

20 A Mammoth legal counsel.

21 Q Do you know who it was at Mammoth that said
22 that?

23 A I do not have the specific lawyer's name. It
24 was a lawyer from Tulsa.

25 Q Were there -- was there any information given

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1 to you about what documents they were talking about?

2 A No.

3 Q Do you know what documents they were talking
4 about or suspect?

5 A My only guess is that there were W-2s that
6 didn't have appropriate documentation on the EIN that
7 Paycom printed for the 2019 tax -- or 2018 tax year that
8 I did have to destroy after requesting new copies.
9 Those were issued out to the employees once they were
10 verified correct.

11 Q Okay. So you said that they had to be
12 destroyed. What do you mean by that?

13 A So they did not have the company's FEIN listed
14 on them, they were incorrect documents, and the
15 employees would not be able to file their tax returns
16 with them.

17 Q Okay. So when you say they had to be
18 destroyed, are you saying they had to be destroyed by
19 law or because you thought they needed to be destroyed?

20 A I destroyed them per my instructions based on,
21 like, legal present that I am aware of within HR. You
22 do not want to have extra W-2s hanging around. And
23 since we got new W-2s issued out to the employees, as
24 well as online copies, these were no longer necessary.

25 Q Okay. Before you destroyed these -- these

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1 inaccurate W-2s did you check with anyone about whether
2 or not that was okay?

3 A I checked in with my director, yes.

4 Q Okay. And who was that?

5 A Michelle Martinez, I believe. I forget her
6 name if I'm honest.

7 Q And what was her position?

8 A I believe it was HR director.

9 Q So she was aware that you were going to destroy
10 the inaccurate W-2s?

11 A Um-hum.

12 Q I'm sorry?

13 A Yes.

14 Q Yes? And, you know, we didn't cover this
15 already, but for a deposition because the court reporter
16 has to write down everything, please keep your responses
17 verbal. I know in normal conversation we will say
18 uh-huh, nuh-uh, and that's fine. But for a deposition I
19 do need to have a verbal response. Is that all right?

20 A Absolutely.

21 Q And you're doing very good about interrupting
22 or talking over me, and I really appreciate that. And
23 I'll make -- I'll promise you that I will do my best to
24 let you finish your responses before I answer (sic.),
25 but also that's something that's important for the court

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1 reporter to take everything down. Understood?

2 A Yes, sir.

3 Q Great. Okay. So did Michelle Martinez
4 authorize the destruction of the inaccurate W-2s?

5 A I don't remember the exact conversation we had.
6 My understanding was yes.

7 Q Oh, I'm sorry. What did you say at the end?

8 A My understanding was yes.

9 Q Okay. But for sure you talked about it and she
10 didn't say not to?

11 A Correct.

12 Q And you don't recall she specifically said,
13 Yes, Mr. Kalman, it's fine, you can destroy them. You
14 don't remember that?

15 A No. That is not the nature of communication at
16 the time.

17 Q Okay. Can you give us a little more specifics
18 on that, like what exactly you asked her and what
19 exactly she said?

20 A I mean, I don't remember. It's been three
21 years at least. I'm sorry.

22 Q Okay. And so those are the only documents you
23 think they could be talking about when they accuse you
24 of destroying documents?

25 A Correct.

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1 Q And just to be sure, you're not aware at any
2 point that you ever destroyed any payroll or hour
3 records that relate to the wages and hours of workers
4 that worked in Puerto Rico for Mammoth and Cobra and
5 Higher Power; right?

6 A Absolutely not.

7 Q When you reminded Mr. Layton of the
8 circumstances of your termination what did he say?

9 A I asked him if he was aware of the nature of my
10 separation with Mammoth and he said yes.

11 Q Okay. And did you -- did you all talk about
12 anything else?

13 A No.

14 Q Have you ever been convicted of any crimes?

15 A No.

16 Q Have you ever been arrested?

17 A No.

18 Q So other than talking to Mr. Layton in the last
19 year or so is there. Anyone else at Mammoth or Cobra or
20 Higher Power that you have spoken to?

21 A No.

22 Q When you worked for Mammoth what was your
23 position? And we're talking -- let's talk about the
24 period from about the Puerto Rico time, which started in
25 October 2017 and went on for a few years. Can you tell

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1 me what your position was during that timeframe?

2 A In 2017 I was an HR generalist. I think it was
3 2018 when I became an HR manager.

4 Q What's the difference between an HR generalist
5 and the HR manager position?

6 A An acknowledgement of the tasks I was already
7 accomplishing and a pay increase.

8 Q Okay. During 2017 and 2018 when you were
9 working for Mammoth, what physical location were you
10 working out of?

11 A I was working out of the 14201 North building.
12 I forgot the exact address. But it's the one off of
13 Memorial in Oklahoma City.

14 Q During that timeframe did you ever work in
15 Puerto Rico?

16 A No.

17 Q When you worked for Mammoth during the
18 2017-2018 timeframe, do you remember which Mammoth
19 entity was on your W-2s that's paying you?

20 A Yes. It was Mammoth Energy.

21 Q And just to be a little more specific on that,
22 do you know if it was Mammoth Energy Partners, Mammoth
23 Energy, Inc., Mammoth Energy Services, Inc. or some
24 other one?

25 A I do not recall. I know they changed their

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1 names at a certain point and I'm not sure when in my
2 tenure they did that.

3 Q Okay. Do you recall what the name -- what the
4 different names were?

5 A I believe there was Mammoth Energy Services LLC
6 and Mammoth Energy Partners. But that's the best I know
7 and I'm not sure the legal descriptions of those
8 entities.

9 Q Okay. At that 14201 North building off of
10 Memorial, that location you were working at, what other
11 companies, if any, besides the Mammoth Energy Services,
12 Mammoth Energy Partners are addressed there?

13 A I know that there are many employees who do
14 work for other Mammoth entities, but I am not aware if
15 they are considered Mammoth employees or directly
16 working for those other Mammoth entities. So it would
17 be hard for me to give a clear answer on that.

18 Q Okay. About how many people worked at that
19 office building, or that office location?

20 A I believe about a hundred.

21 Q Okay. And just to clarify, I didn't mean the
22 whole building. I mean the folks working for Mammoth at
23 that location. You're saying it's about a hundred?

24 A I'm not sure. A hundred is probably my best
25 bet, but it could easily be 50. I'm not sure.

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1 Q Okay. So your educated guess is 50 to 100?

2 A Correct.

3 Q Okay. Were there Cobra employees that worked
4 at that same address?

5 A I don't know if they were officially Cobra
6 employees, but I do know they worked on Cobra
7 accounting, yes.

8 Q Were there any Higher Power folks that worked
9 at that office.

10 A Again, I don't know if they were official
11 Higher Power employees, but I do know they worked on the
12 accounting for Higher Power.

13 Q Okay. And who were the -- do you remember the
14 names of the folks that worked on the accounting for
15 Higher Power at that address?

16 A I do not.

17 Q Do you remember the names of the folks that
18 worked on the Cobra accounting at that address?

19 A I do not.

20 Q During that 2017-2018 timeframe you worked for
21 Mammoth, who was -- who directly did you report to?

22 A I forgot when Jeff Beagle left Mammoth Energy
23 Services. I worked directly for Jeff Beagle up until
24 his departure, and then after that point Michelle was
25 appointed the new HR director so I worked directly under

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1 her.

2 Q Is that Michelle Pulling?

3 A No. That was -- I was a contemporary with her.

4 She reported to Jeff like I did.

5 Q Okay. Do you remember the Michelle that
6 replaced Jeff, do you remember her last name?

7 A Again, I believe it was Hernandez, but I could
8 be mistaken.

9 Q Okay. I'm sorry. I didn't hear that the first
10 time. Okay.

11 A It's okay.

12 Q Okay. So your direct report was Jeff Beagle.

13 A Correct.

14 Q Until he was replaced by Michelle?

15 A Correct.

16 Q And who were the folks reporting to you during
17 that timeframe of 2017-2018, during the Puerto Rico
18 time?

19 A I believe it was Beth -- Beth Stone was my
20 direct report at that time.

21 Q Okay. And who did Beth Stone work for?

22 A She worked for Mammoth Energy.

23 Q In regards to you, who was JD Kinsey?

24 A I am unaware of that name. Yeah.

25 Q You're not aware of a gentleman that would work

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1 doing, like, basically payroll for Higher Power that was
2 named JD Kinsey?

3 A No, no.

4 Q Okay. You have never heard of JD Kinsey?

5 A If I have I am not -- I did not work with him.

6 Q Oh, okay. Would you correspond with him?

7 A I mean, it is entirely possible. I dealt with
8 a lot of payroll questions and issues. But I was never
9 directly over him and I wouldn't have directly, like --
10 on a day-to-day basis work with him.

11 Q Okay. Okay. I mean, he didn't work in your
12 office?

13 A Correct.

14 Q Do you recall emailing, exchanging, calling,
15 talking with him?

16 A I do not remember calling or emailing or
17 talking with him.

18 Q Okay. What about Missy Davis, do you remember
19 her?

20 A Yes.

21 Q Okay. Who was Missy Davis in regards to you?

22 A Missy Davis was a -- she was the HR generalist
23 or HR manager, I'm not sure of the exact title, for Five
24 Star Energy. And as I understood it, she was a
25 contemporary. She would ask me questions on

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1 administrative questions she had, but that was about it.

2 Q Okay. For Higher Power who was the person that
3 you would have dealt with, if anyone, that would have
4 been like their Missy Davis?

5 A There was a person who was working there when
6 it first started, and I do not recall her name. She
7 left within, I want to say, six months of acquisition.
8 And she was the most contemporary person for that
9 company.

10 Q Okay. Could that have been Shelly Wheeler?

11 A The name sounds familiar, but I couldn't say
12 for certain.

13 Q Okay. All right. I'm going to show you an
14 exhibit here that we're marking as Exhibit 199.

15 A Okay.

16 (Exhibit 199 was marked for
17 identification and made a part of the
18 record.)

19 Q Can you see my screen where we have, basically,
20 it's like a summary from your LinkedIn. Do you see
21 this?

22 A Correct.

23 Q Okay. Can you just take a look at this Exhibit
24 199 and let me know if that is, in fact, information
25 from your LinkedIn and if it's accurate?

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1 A Yes. That is from me and looks to be accurate,
2 correct.

3 Q Okay. So you worked at Paycom before Mammoth?

4 A Correct.

5 Q Did your work at Paycom have anything to do
6 with you getting hired at Mammoth?

7 A Correct.

8 Q Okay. So what happened? How did you go from
9 Paycom to Mammoth?

10 A Yeah. I was looking for a new job. I was no
11 longer interested in staying with Paycom. And at that
12 point a friend of mine heard that -- he got a call from
13 a recruiter. He had a network of recruiters that he
14 worked with and one of them was looking for a payroll
15 person who had experience with Paycom and he was, like,
16 here, here is Alex, here is his number. I met with her,
17 had lunch, and then from there had an interview with
18 Mammoth to be their payroll person.

19 Q Okay. And I noticed at the top that you
20 advertise yourself as having eight years of Paycom HRIS
21 experience. First of all, can you tell me what HRIS?

22 A Yeah, it's human resources information system.
23 HRIS is a colloquial term that is used in the
24 third-party payroll milieu. And it allows for not just
25 payroll, but many other HR functions, including

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1 applicant tracking, time management, auditing,
2 reporting, things like that.

3 Q Okay. And so -- and forgive me for any
4 ignorance. If that's your first line on your resume,
5 this is obviously very important to you. I mean, isn't
6 that right? Eight years of Paycom HRIS experience, that
7 is extremely important to you as you advertise yourself
8 to employers?

9 A Yes.

10 Q Okay. And can you explain to me why it's
11 important to you? Why is that valuable?

12 A I mean, it's valuable to me because it is a
13 skill that I can show that will allow me to get jobs
14 that require experience. I am no longer in the payroll
15 and HR field, though, and I have no desire to go back to
16 it.

17 Q Okay.

18 A So I will be taking this down.

19 Q All right. Is there something about Paycom
20 that was -- I mean, because you advertise specifically
21 for Paycom. Is there something about Paycom that, by
22 advertising that, that made you more valuable?

23 A Yes. Specifically whenever somebody is looking
24 for a new payroll representative they generally ask for
25 a certain amount of experience with whatever system they

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1 are currently using, be it Paycom, ADP, Paylocity,
2 UltiPro. And so putting out the experience that you
3 have with certain systems is advantageous for hiring.

4 Q Okay. And so knowing Paycom was a big part of
5 you getting hired at Mammoth?

6 A Correct.

7 Q After Mammoth you worked for Yakima Valley Farm
8 Workers Clinic?

9 A Yes, Yakima Valley Farm Workers Clinic.

10 Q Okay. Can you tell me what that work was
11 about?

12 A I was a benefit leave analyst. I worked on
13 rolling out the employer portion of the Washington Paid
14 Family Medical Leave Act that went out in 2020. I
15 helped with their leave programs and managed their FMLA.

16 Q During the time you worked for Mammoth during
17 that Puerto Rico time of 2017 to 2018, you already had
18 your bachelor in business administration; correct?

19 A Correct.

20 Q And also business administration and management
21 like it says here?

22 A I have a Bachelor's of Science in Business
23 Administration; right.

24 Q And that was a degree you already had before
25 you went to Mammoth?

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1 A Correct.

2 Q Okay. Did you have any certifications, look
3 you HR relevant certifications before you went to
4 Mammoth or during the time you worked there?

5 A No.

6 Q Okay. Can you explain to me any training
7 you've had, if any, about the Fair Labor Standards Act?

8 A Only that I looked at myself and when I was
9 being advised by legal representatives.

10 Q Okay. What legal representatives?

11 A There were -- I was not directed -- I was not
12 represented directly. I apologize. I was on the
13 peripheries of other cases that Mammoth and subsidiaries
14 had that I had to --

15 MS. VILLASEÑOR: I'm going to interrupt
16 here to counsel you to remember that you have a
17 privilege that relates back to any communications you
18 had with legal counsel while you were at Mammoth to the
19 extent that they have not been limited waived. And I
20 will just instruct you on that.

21 Q (By Mr. Moulton) So, Mr. Kalman, just if I
22 may, I don't mean to get into details of conversations
23 with any lawyers or any -- you know, communications that
24 you may have been privy to, because, as Ms. Villaseñor
25 has asserted, there is a attorney-client privilege that

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1 Mammoth has on that.

2 What I'm trying to get is kind of your
3 background on whether -- you know, what you know
4 about -- just generally how you know about the FLSA and
5 basic information about that.

6 So it sounds like Mammoth had had some wage and
7 hour cases and you had maybe kind of helped out with
8 some of those cases and so you learned a little bit
9 about the FLSA through that. Is that accurate?

10 A Correct.

11 Q Okay. Now, did you have any specific training
12 as part of your degree about the Fair Labor Standards
13 Act?

14 A No.

15 Q And have you attended any HR seminars where you
16 would learn about the Fair Labor Standards Act?

17 A No.

18 Q Okay. Now, you have done some of your own
19 research?

20 A Correct.

21 Q In general is it your understanding that the
22 Fair Labor Standards Act has rules about when and how to
23 pay overtime pay?

24 A Correct, yes.

25 Q In regards to payment of day rates, what is

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1 your understanding what the Fair Labor Standards Act
2 would require?

3 A As far as I am aware you cannot pay day rates.

4 Q Okay. If you do pay a day rate does Fair Labor
5 Standards Act provide how it can be done or are you just
6 saying you just can't?

7 A I am not aware that you can.

8 Q Okay. Now, Mr. -- is it -- I'm sorry. I might
9 say your name still wrong. Is it Kalman?

10 A Kalman.

11 Q I forget if it's Kalman or Kalman?

12 A It's Kalman.

13 Q Kalman. I'm sorry. I'm struggling with that
14 one. Mr. Kalman, there has been a limited waiver of
15 attorney-client privilege in this case and I'm going to
16 ask you some specific questions to see if you have any
17 knowledge about those issues that have been waived.

18 Obviously, Ms. Villaseñor will assert any privilege.

19 And if she asserts an attorney-client privilege, I don't
20 want you to answer it.

21 But I want to know if you ever had any
22 conversations or communications with an attorney named
23 Steven Broussard about overtime or payment as to the
24 workers in Puerto Rico that were restoring electrical
25 work?

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1 A I do not know if I spoke with Steven Broussard
2 specifically about this.

3 Q Okay. And we'll talk about some emails that he
4 was -- that I think you're on --

5 A Okay.

6 Q -- in regards to that. So but -- but before we
7 get there, it sounds like you don't actually remember
8 talking to him or being in a meeting with him?

9 A Not to my knowledge, no.

10 Q Okay. I want to show you an email chain that's
11 Exhibit 131, which has been introduced previously. And
12 we're going to be reviewing several emails today,
13 Mr. Kalman. And I think the most efficient way to do
14 this is you can see here on the screen, you can see it
15 starts at the bottom and moves up.

16 What I think we should do is I'm going to go
17 down to the bottom of this exhibit and let you read it,
18 get a chance, get familiar with it. When you're ready
19 would you ask me to scroll up so you can continue
20 reviewing it, and when you're ready let's talk about it.
21 Fair enough?

22 A Okay.

23 Q And if you need me to Zoom, I can Zoom.

24 A Okay. I'm good to go up.

25 Q Okay.

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1 A Okay. All right. I am good to scroll up.

2 COURT REPORTER: Mr. Moulton, are you
3 still there?

4 THE WITNESS: No.

5 (No response.)

6 COURT REPORTER: Ms. Villaseñor, will you
7 let us go off the record, please?

8 MS. VILLASEÑOR: Yes. Let's go off the
9 record.

10 VIDEO OPERATOR: Off the record.

11 (A break was had from 10:06 to 10:15
12 a.m.)

13 VIDEO OPERATOR: Back on.

14 Q (By Mr. Moulton) All right. Mr. Kalman, we
15 were reviewing an email before we got interrupted there.

16 MS. VILLASEÑOR: Dave, I'm sorry. You're
17 on Exhibit 133; correct?

18 MR. MOULTON: 131.

19 MS. VILLASEÑOR: Oh, you were on 133 or
20 were you on 131?

21 MR. MOULTON: I was on 131.

22 MS. VILLASEÑOR: Okay. Thank you.

23 MR. MOULTON: Yeah, no problem.

24 Q (By Mr. Moulton) So, Mr. Kalman, you have had
25 a chance to review Exhibit 131; correct?

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1 A I read up until the Steve Broussard message
2 regarding the FLSA. I did not read above that. So I'm
3 not sure if there was more to it.

4 Q Okay. All right. So I think you need to
5 review, then, the top page.

6 A Okay.

7 Q That way -- okay. So go ahead and review that.

8 A All right. Is that something you will bring up
9 or is that something I need to find somewhere?

10 Q Oh, you still don't see it yet. Okay. I got
11 knocked off. I haven't shared my screen yet. I'm
12 sorry.

13 | (The witness reviewed the document.)

14 A Okay. I have reviewed that.

15 Q Okay. So I want to ask you a few questions
16 about it. Back here, if you will notice you were
17 forwarded an email from Keith Ellison about what they
18 were going to pay the folks working in Puerto Rico. Do
19 you see that?

20 A Yes.

21 Q What did you understand from Mr. Ellison's
22 email?

23 A That those were the day rates that he wanted to
24 pay his employees.

25 Q Were you part of the process to come up with

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1 what language would be used in the offer letters?

2 A No, I was not part of the offer letter
3 languaging.

4 Q Now, in your -- in your position in HR with
5 Mammoth Energy, were you aware of any efforts made by
6 the subsidiaries like Cobra and Higher Power and Five
7 Star to recruit workers?

8 A Yes. I know they had to do a lot of hiring for
9 this job.

10 Q Okay. Do you know when the hiring or the
11 recruiting started?

12 A I am not sure. I think it was after we signed
13 the contract with PREPA.

14 Q Okay. At this point as of October 19th when
15 Mr. Ellison announced these day rates, at this point
16 there still wasn't a more detailed or more firm, if you
17 will, payment plan set up; right?

18 A Correct.

19 Q Okay. It was several days later when there was
20 a plan to come up with having hourly rates that would
21 target these day rates; correct?

22 A Absolutely.

23 MS. VILLASEÑOR: Objection; form.

24 Q (By Mr. Moulton) Is that your understanding?

25 A Yes.

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1 Q Okay. Were you ever consulted about the
2 recruiting efforts? Were you ever asked about it?

3 A No, I was not a part of the recruiting efforts.

4 Q Okay. That was the job of folks at Higher
5 Power and Five Star?

6 A Correct.

7 Q Let me show you a document we've used
8 previously as Exhibit 140. And just to confirm with me,
9 the window you are seeing, do you see -- you just see
10 the window that has the document; right? The 140. Are
11 you seeing anything else?

12 A I am only seeing 140 at this time.

13 Q Okay. So let's do the same thing with 140. Go
14 ahead and review up from the bottom of this document
15 where the email chain starts and scroll up. Let me know
16 when you need to scroll.

17 A Okay. Okay. All right. Okay.

18 Q Okay. After having reviewed these emails, do
19 you recall these emails?

20 A Yes.

21 Q Okay. And so starting back down at the bottom
22 it looks like you're starting this email chain with some
23 questions about how the folks in PR are going to be
24 paid; correct?

25 A Correct.

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1 Q Okay. In regards to No. 2, can you tell us
2 what you were trying to find out?

3 A Yes. So the management team liked the term
4 "day rate" for the Puerto Rico hourly rate of pay. It
5 was a quick shorthand for them at the time. And so
6 that's what I was going for with that was if the
7 employees were going to be receiving their normal hourly
8 rate of pay that they received in-state as well as in
9 Puerto Rico.

10 Q Okay. And in number 8 -- I'm sorry -- on
11 November 8 you have a follow-up question about the
12 current policy to pay employees holiday time for all
13 holidays. In this email which employees are you talking
14 about?

15 A Specifically the employees that were going to
16 be in Puerto Rico, as they had different holidays.

17 Q Okay. And so was it the same policy for
18 holidays for the workers in Puerto Rico regardless if
19 they were Five Star or Higher Power?

20 A As far as I'm aware the policies should have
21 been uniform. I know that there was a lot of issue with
22 that.

23 Q Okay. So was the pay policy uniform between
24 Cobra, Mammoth, and Higher Power on the island?

25 A Correct.

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1 Q And on No. 2, as you can see from the emails
2 above, the answer to your question from Ken and Keith is
3 here in No. 2. Do you see that?

4 A Correct.

5 Q Okay. And can you enlighten us what you
6 understood the -- what you understood by their answer?

7 A That the employees would not be getting paid
8 their in-state hourly rate on top of their Puerto Rico
9 hourly rate, but would only be receiving the rate they
10 got while in Puerto Rico.

11 Q Okay. And can you describe to us what the rate
12 was in Puerto Rico?

13 A I do not know off the top of my head. It was
14 based off of the day rates in the original email by
15 Keith that were calculated based on hours worked.

16 Q Okay. Let's -- we're going to look at an email
17 from that same day as 140 I think. Let's -- let's
18 confirm. So the answer you got -- back on 140. The
19 answer you got from Ken and Keith when he write his
20 answers down below, it was on Thursday, November 9th at
21 2:01 p.m. Do you see that?

22 A Correct.

23 Q Okay. So let's go over to 2 -- number 200 now,
24 Exhibit 200. And let's take a look at this email chain.
25 And if you would just take a look at it and just let me

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1 know when you need to scroll up.

2 A All right.

3 Q All right, Mr. Kalman. There, the email that's
4 dated November 9th, 2017, 2:13 p.m., in Exhibit 200, did
5 you tell Ms. Wheeler that the workers in PR that
6 normally receive an hourly rate -- an hourly rate will
7 only receive their day rate for the time they are in
8 Puerto Rico to include the general foreman?

9 A Yes. To clarify, though, the day rate that we
10 discussed was, again, that shorthand that the executives
11 liked, meaning it was a day rate that was broken down to
12 an hourly rate that the general foremans were going to
13 receiving instead of their normal salary, since they
14 were salaried employees in-state.

15 Q Okay. And the understanding you had here is
16 the same understanding you had for Exhibit 140, which
17 was just 12 minutes before; correct?

18 A Right. It should have been, like, the day rate
19 broken down into the hourly rate that we did those
20 conversions.

21 Q Okay. And we're going to talk about that in a
22 minute.

23 A Um-hum.

24 Q I will show you Exhibit 137.

25 A Okay.

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1 Q We used this one previously. Can you tell us
2 what Exhibit 137 is?

3 A From everything it looks like it should be the
4 base rate -- base pay plus day rate for certain
5 employees as well as certain classes of employees.

6 Q Okay. So the first part, the ones that are --
7 well, I guess I can't even say that. But it looks like
8 there is some people that have base rates plus day
9 rates, and there is some people who only have day rates.
10 Can you explain why that was?

11 A I mean, the only explanation I ever received
12 was that they negotiated a higher base pay.

13 Q Were there some folks on the island, like, that
14 were in management that got a base salary plus a day
15 rate?

16 A Correct.

17 Q So under the base pay there, is that reflecting
18 those base salaries?

19 A So the base pay, as far as I'm aware, should be
20 their normal salary, and then the day rate should be
21 what they receive in addition.

22 Q Okay. And we can see here that for the
23 mechanics, the safety guys, and then general foremen on
24 down that there is not a base pay listed; correct?

25 A Correct.

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1 Q And for them it's just a day rate?

2 A Correct.

3 Q Let me show you what's been previously used as
4 Exhibit 139. It's a two pager. Why don't you just take
5 a look there at the bottom page of the document and then
6 look at the top page. And I'm not going to ask any
7 details about top page. Do you recognize this as the
8 pay scale for Higher Power in Puerto Rico?

9 A Yes.

10 Q And these are the same rates that Mr. Ellis set
11 forth in his original email; correct?

12 A Without looking at the email I couldn't say for
13 certain, but I believe so.

14 Q And in Exhibit 138 for Five Star we have the
15 same rate system; correct?

16 A It should be, yes.

17 Q On Exhibit 166 we have an email chain you're
18 copied on. And I want you just to -- let's go ahead and
19 just review this and let me know when you want to scroll
20 up and I'll ask you about it.

21 A Okay. I've reviewed.

22 Q Okay.

23 A Okay.

24 Q All right. So with -- so you saw the question
25 from -- you were copied on this question from Missy and

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1 also copied with Mr. Beagle's response. Can you
2 summarize for us what the issue was and how you were
3 handling it?

4 A Yeah. Employees were having questions about
5 their pay. Employees were wanting to understand an
6 explanation of the day rate. They found it very
7 complicated breaking the day rate down into an hourly
8 rate. And so I believe Jeff created an Excel
9 spreadsheet to help them with that, and that's what he
10 attached.

11 Q Okay. So the way I understand it, and you
12 correct me if I am wrong, but Mr. Beagle took those day
13 rates and worked out an hourly rate that, if the worker
14 worked the entire week, would end up getting their day
15 rate; correct?

16 A Correct.

17 Q Okay. And do you understand how he did that?

18 A I mean, I -- I could come to an understanding.
19 I don't have an understanding currently because I
20 haven't done the math myself.

21 Q Okay. It's been a few years?

22 A Yes.

23 Q Okay. But, you know, we're going to be -- I'll
24 ask you more in detail about that. But before I get
25 there, did Missy Davis, did she ever express any

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1 displeasure to you about the -- this pay plan?

2 A Yes.

3 Q What did she say?

4 A As far as I understand, she was just expressing
5 frustration in general.

6 Q Okay. So we see here that she was venting to
7 Ms. Samantha Nall. But did she bring it up to you
8 privately at all?

9 A I mean I would hear a lot of frustrations from
10 a lot of people, yes. So Missy did communicate that she
11 was frustrated with the system.

12 Q And what was her frustration? Can you describe
13 to us what she was frustrated about specifically?

14 A That the guys couldn't understand it.

15 Q Okay. And who -- did anyone else express that
16 frustration?

17 A I mean, other than the men themselves, not to
18 my knowledge.

19 Q Okay. So would the men, the actual workers, be
20 expressing this frustration to you specifically or
21 directly.

22 A No. From what I understood they would express
23 it to Missy when she would get a call from them.

24 Q Okay. And did -- besides Missy was there
25 anyone else that was mirroring the frustrations towards

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1 you?

2 A Shelly might have, but I don't know.

3 Q Okay. And in Exhibit 166 you can tell there is
4 an attachment here, a copy of hourly rate conversations,
5 V2, Excel spreadsheet. Do you see that?

6 A I see that there is an attachment. I do not
7 see the attachment itself.

8 Q Right. Okay. And so we're going to review
9 that, which was an Excel spreadsheet that you would have
10 seen or reviewed when you worked for Mammoth; correct?

11 A I would have seen it, yes.

12 MR. MOULTON: Okay. This is Exhibit 167,
13 which is a native Excel file. It's unmarked, but it is
14 Exhibit 167. This is for the court reporter. The file
15 name is Mammoth 3292 Confidential.

16 Q (By Mr. Moulton) All right. Mr. Kalman or
17 Kalman let look at this spreadsheet together. I'm
18 assuming with your background in information systems you
19 are pretty competent with an Excel spreadsheet.

20 A In general, yes.

21 Q Okay. So here in this spreadsheet we can see
22 how Mr. Beagle calculated the hourly rates that would
23 match the day rates the workers had been told; correct?

24 A Yes.

25 Q And so the way this was done is assuming a

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1 seven days worked in a work week with 16 hours per day,
2 you would essentially, at the -- for example, at the
3 1,250 per day level need to get 5912 as the regular
4 rate. So over that entire week you would get the
5 equivalent of the day rate, which was 8,750; correct?

6 A Correct.

7 Q And so in column K here we can see exactly what
8 that rate would have to be to match these day rates that
9 have been set by Mr. Ellison and had been promised to
10 workers; right?

11 A Yes.

12 Q Now, I don't know if you've ever noticed with
13 this spreadsheet, but, like, if you increase the decimal
14 places, the number of decimal places you can see that
15 rate, for example, keeps on going. Do you see that?

16 A I do see that.

17 Q Okay. So, in other words, that's not a rounded
18 rate in this spreadsheet, it keeps going. Does that
19 make sense?

20 A Yes.

21 Q Okay. So I took this same spreadsheet in a
22 prior deposition, we're calling it 174 and we're -- the
23 file name is Mammoth 3292 Confidential-EX174. If we
24 take -- this is the same spreadsheet. If we round those
25 numbers like it would in payroll -- right? If you're

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1 going to put hourly rates in payroll you don't put
2 59.1212 going on. You would put 59.12; right?

3 MS. VILLASEÑOR: Objection; form.

4 Q (By Mr. Moulton) You can answer, sir.

5 A Um, it, uh -- the hourly pay rate goes in as a
6 set number so long as the employee is hourly. If it is
7 salary you are supposed to put in the bi-weekly or
8 whatever frequency payroll that the employee will
9 receive directly and then the system calculates out the
10 actual salary.

11 Q Okay. And I guess maybe we're not talking
12 about the same things. My question was is that when you
13 actually are going to go into payroll system and
14 calculate what the pay would be for these hourly
15 workers, the rate you would use would be rounded to the
16 nearest penny; correct?

17 A As far as I am aware, yes. I don't have that
18 knowledge about Paycom's internal systems. We would put
19 it into two decimal points.

20 Q Okay. So you would put in this as two decimal
21 points.

22 A Correct.

23 Q Okay. So when we do the same math in a
24 spreadsheet at two decimal points to calculate what the
25 actual pay would be for a week at these hour rates, we

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1 get this column over here in L. Did you ever notice
2 that the numbers would be a little bit different than
3 exactly the day rate?

4 A We were made aware of this issue, yes.

5 Q Okay. And so you can see from, you know, in
6 column M the differences between what it would be with
7 the rounded rate versus the promised rate; right?

8 A Correct.

9 Q Okay. So, for example, at the \$1,250 level,
10 it's over a week, the different will be 24 cents?

11 A Yes, that appears accurate.

12 Q Right. And, you know, just another example,
13 this one is easier. At the thousand dollar level the
14 difference would be 40 cents.

15 A Correct.

16 Q Okay. And so we can see, then, that the hourly
17 rates that were actually used to target the day rates,
18 when applied over an entire week, would actually get the
19 worker to within less than a dollar of what their day
20 rate was promised; right?

21 A Correct.

22 MS. VILLASEÑOR: Objection; form.

23 Q (By Mr. Moulton) Now, Mr. Kalman, did you ever
24 see a spreadsheet like this calculated for a different
25 number of hours per day, like maybe 11?

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1 A The -- I forgot the number of hours that were
2 initially discussed. I had thought it was 12, but
3 clearly I'm mistaken, since this spreadsheet says 16.
4 I'm not aware of any spreadsheets other than this one.

5 Q I will pull up my next exhibit. Mr. Kalman,
6 are you seeing my screen right now?

7 A I see the Excel document that we were looking
8 at prior.

9 MR. MOULTON: Okay. Is Ms. Villaseñor
10 still on?

11 | COURT REPORTER: Yeah, she is.

12 MR. MOULTON: All right. She's just
13 muted. Okay.

14 MS. VILLASEÑOR: Yes.

15 MR. MOULTON: All right. We're ready to
16 go.

17 MS. VILLASEÑOR: Are you trying to get a
18 new exhibit?

19 MR. MOULTON: Yeah. It's -- something is
20 wrong with Zoom. It's not showing me what I'm showing.
21 So let me just try this. It won't let me stop sharing.
22 I do this all the time. I've never had this problem.

23 MS. VILLASEÑOR: Maybe you have too many
24 tabs.

25 MR. MOULTON: Maybe. I mean, it's

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1 possible. Do you see Exhibit 151 now?

2 THE WITNESS: I'm still seeing the same
3 Excel document.

4 MR. MOULTON: Okay. So the screen share
5 is frozen on my end. Can you all just do a five-minute?
6 Let me just reset this. Is that all right?

7 MS. VILLASEÑOR: All right.

8 MR. MOULTON: All right. Thanks.

9 VIDEO OPERATOR: Off the record.

10 (A break was had from 10:48 to 10:52
11 a.m.)

12 VIDEO OPERATOR: Back on.

13 Q (By Mr. Moulton) All right. So, Mr. Kalman,
14 can you see Exhibit 151 on your screen now?

15 A Correct, yes.

16 Q Okay. So after looking at the math we did,
17 that we looked at in the spreadsheets, can you verify
18 for us that these Cobra rates are the rates that were
19 figured out by Mr. Beagle in the spreadsheet?

20 A Yes.

21 Q Okay. And can you explain to us what these
22 different rates are?

23 A There is the Puerto Rico storm per day. So
24 that is a brief outline of how much the employees can
25 expect to make on a given day given a certain number of

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1 hours worked. The PR storm per hour is the hourly rate
2 that they would be receiving paid in Puerto Rico where
3 they were working. And the non-Puerto Rico wage would
4 be whatever they would be making back state side during
5 normal business operations.

6 Q Okay. So these -- if I understand these rates
7 right, these rates are figured to be, like -- like let's
8 take this mechanic rate. This 4257 is the rate where,
9 if you work a full week and if it's 16 hours per day
10 full week, with the 4257 regular rate plus the overtime
11 on that, it's going to come out to be 900 times 7 for
12 the week; right?

13 A Correct.

14 Q And so there -- there's a problem with this pay
15 system for when people work a -- less than a complete
16 week; right?

17 MS. VILLASEÑOR: Objection; form.

18 A We did notice a pay discrepancy when they are
19 working less than a full seven days.

20 Q (By Mr. Moulton) Okay. Can you describe to us
21 what the pay discrepancy was when you work less than a
22 full seven days?

23 A Based on -- you basically had to redo the
24 calculations to find a new appropriate hourly rate to
25 make it out so that the daily rate came out to be

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1 accurate.

2 Q Okay. So would you -- would you actually
3 calculate a new regular rate or would you just pay the
4 difference between what it would be hourly and what the
5 day rate was?

6 A I believe once we noticed that there was this
7 discrepancy and we figured out -- I believe that we went
8 ahead and paid a true up amount based off of the number
9 of days worked.

10 Q Okay. Now, on island there wasn't a system
11 like you would normally have where folks -- where hours
12 were recorded exactly, like, you know, sign in at 5:50
13 a.m. and sign out at 6:30 p.m.; correct?

14 A Correct.

15 Q How were the hours tracked on the island for
16 the workers if at all?

17 A To my understanding it was done that the
18 managers would record the number of guys that were going
19 out, made sure that they worked a full day, which was
20 the number of hours that we did the date rate off of,
21 the 16, and then would come back and would report that
22 information to the administration and they would put
23 those hours in.

24 Q Were you ever aware or not whether or not
25 managers actually recorded actual time worked or made

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1 sure they actually worked 16, or was it more of an
2 attendance-based system?

3 A I am not aware.

4 Q Okay. But safe to say that when you are
5 calculating how much the true ups would be, you would
6 assume 16-hour days; correct?

7 A Correct.

8 Q Okay. And if we could I'd like to do an
9 example based on 151 like at the journeyman lineman rate
10 of \$1,000 per day and 47.30 per hour. If you take, as
11 an example, if you have a journeyman lineman who works
12 one day in that -- in the work week, and if his hourly
13 rate is 47.3 -- 47.30 in the system for one days work,
14 the system would calculate 47.30 times 16; correct?

15 A Correct.

16 Q That comes out to 756.80; right?

17 A Yes.

18 Q I have the calculator up. And so when you talk
19 about the true up, you're talking about paying the
20 difference between the day rate of a thousand and that
21 \$756.80 figure for example; right?

22 A Correct.

23 Q So this was -- so this true up system is the
24 way you can make sure you're still paying the folks on
25 island what they were expecting to be paid even if they

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1 don't work a full week; right?

2 A Correct.

3 Q We're going to look at an exhibit which has
4 been previously used an Exhibit 201. Again, it's an
5 email so it's not very long. But go ahead and look,
6 scroll through this, let me know when you want to scroll
7 up and we'll talk about it.

8 A Okay. Okay.

9 Q All right. Some in Exhibit 201 you and
10 Mr. Beagle, who is your boss, correct, are discussing
11 how to implement this true up system; right?

12 A Correct.

13 Q Okay. And so why -- what is Mr. Beagle asking
14 you and why?

15 A Because I have assisted with complicated
16 calculations in the past and I have worked on getting
17 those numbers into the Paycom system to report
18 accurately.

19 Q You're the Paycom expert?

20 A Correct.

21 Q In your email back to Mr. Beagle what do you
22 mean about now you're unsure if you go with the day
23 rate, if you're required to pay the half OT premium of
24 full one-and-a-half. What are you asking?

25 A So let me reread this. It's complicated.

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1 Q Um-hum.

2 (The witness reviewed the document.)

3 A So the best understanding I have is there are
4 questions on whether or not pay would need to be done at
5 a premium in addition to what we had paid out or if the
6 overtime and the true up was enough.

7 Q Okay. So you were expressing to Mr. Beagle
8 your uncertainty about whether or not additional
9 overtime would be owed?

10 A If it needed to be calculate based on the true
11 up.

12 Q Oh, I see. So -- and I think -- so on this
13 middle email here of 3/13 it looks like you all are
14 talking about this idea where you -- that's what you --
15 this is the true up, right, where you say, You have a
16 day rate fixed earning you add to each day. Are you
17 talking about the true up there?

18 A Correct.

19 Q Okay. So in the next email you're discussing
20 with Mr. Beagle whether or not overtime would need to be
21 paid based on the true up?

22 A Right. If we would have to calculate their
23 hourly rate based on that true up amount.

24 Q Okay. So recalculate the hourly rate and then
25 figure out if overtime would be owed on that?

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1 A Correct.

2 Q Okay. Do you remember if Mr. Beagle ever
3 answered that?

4 A I am not aware.

5 Q Were you aware of whether -- well, I mean, we
6 looked at a prior email where -- that you read -- you
7 may recall this, in Exhibit 131, where they were
8 discussing the pay plan with Mr. Broussard. Do you
9 remember that?

10 A Yes.

11 Q Let's go ahead and just pull that up again, the
12 131 exhibit. Do you see where -- there is these emails
13 going back and forth between Jeff Beagle and
14 Mr. Broussard where it looks like the last one on this
15 chain is October 22nd; right?

16 A Correct.

17 Q Okay. So that was just the day before the
18 emails in 201; right?

19 A Correct.

20 Q Okay. So there is a question that came up from
21 you, at least, the question about how to calculate
22 overtime the day after a conversation with their lawyer
23 about how to pay overtime; correct?

24 A Correct.

25 Q Are you aware whether Mr. Beagle followed up

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1 with Mr. Broussard about this -- about the true-up plan?

2 A I am not aware.

3 MR. MOULTON: Ms. Court Reporter?

4 Ms. Bloye?

5 COURT REPORTER: Yes, sir.

6 MR. MOULTON: Have I used Exhibit 178
7 yet?

8 COURT REPORTER: Let me go back and look.

9 Hold on. You have not mentioned 178.

10 Q (By Mr. Moulton) All right. Mr. Kalman, let's
11 look at Exhibit 178. This is the same email chain we've
12 been looking at, a different branch of it, if you will.
13 Go ahead and take a look at this.

14 A Okay.

15 Q I'll scroll when you're ready. Okay?

16 A Okay.

17 Q Okay. What is Mr. Beagle asking you on
18 September 23rd at 3:15?

19 A He is asking about a variable OT rate depending
20 on the number of hours they worked to better --

21 Q Okay.

22 A -- match up with the day rates.

23 Q Okay. Do you know if he checked with
24 Mr. Broussard about this?

25 A I am not sure.

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1 Q Let's look at Exhibit 180. Some emails that
2 you're copied on. Let's go ahead and do the same,
3 scroll up. Let me know when you're ready.

4 A Okay. I'm good to go up.

5 Q Okay.

6 A Okay.

7 Q Okay. Now, with the Paycom system you're one
8 of the people that's going to have to be administering
9 the policies, the payroll policies to make sure the pay
10 is correct; right?

11 A I did training for Higher Power and Five Star
12 to enter the time in, correct.

13 Q Okay. So in Mr. Beagle's email to you and
14 Ms. Davis, what is Mr. Beagle saying about how the true
15 ups are going to be handled?

16 A That after each bi-weekly pay period is my
17 understanding, if the employee had not received an
18 amount equal to the number of days worked in Puerto Rico
19 they would receive that amount in a gross up.

20 Q Let's look at Exhibit 181. These are some
21 emails that you are also a part of. Can you review
22 these for me? Let me know when you are ready.

23 A Okay. I am good to go up.

24 Okay. I am good to go up. Okay.

25 Q Okay. What is Missy Davis asking for in this

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1 email chain?

2 A So Missy was using the same email chain several
3 different times, it looks like. And so I was following
4 up saying that we were going to be checking in with the
5 management team on how to handle the true up, and then
6 Jeff was responding.

7 Q Okay. And so Mr. Beagle asked your opinion on
8 the -- the true up policy; correct?

9 A Correct.

10 Q And -- and so what did you think about it?

11 MS. VILLASEÑOR: Objection; form.

12 A I said that it sounded fine by me.

13 Q (By Mr. Moulton) Okay. And what did you mean
14 by that?

15 A I mean, all I can say is what's on the email.
16 I mean, based on what it says, it sounds like I was okay
17 with that.

18 Q Okay. And to kind of clarify.

19 A Yeah.

20 Q Do you think your role in this was the person
21 that would determine, you know, that the gross ups would
22 be done or you were the person who was helping everyone
23 to implement that?

24 A I offered options to my executive team and to
25 my director as to ways we could make payroll happen.

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1 Q Okay. So do you think you were part of the
2 decisionmaking process about what the policy would be or
3 more on the implementation side or both?

4 A I would say probably both.

5 Q Okay. And with Mr. -- I'm sorry? Somebody
6 said something.

7 COURT REPORTER: It was just an audio
8 interruption. But we have five minutes left.

9 MR. MOULTON: Oh, okay. For the video?

10 COURT REPORTER: Yes, sir.

11 Q (By Mr. Moulton) Okay. So, Mr. Beagle -- I'm
12 sorry. Mr. Kalman, did you ever hear anything about
13 whether or not Mr. Beagle, you know, discussed or
14 verified whether or not this policy would be compliant
15 with the FLSA with any lawyers?

16 A I am not aware if he had that discussion.

17 MR. MOULTON: Okay. All right. We can
18 go ahead and take a break for the video.

19 VIDEO OPERATOR: Off the record.

20 (A break was had from 11:10 to 11:17
21 a.m.)

22 VIDEO OPERATOR: Back on.

23 Q (By Mr. Moulton) So, Mr. Kalman, we are going
24 to look at another exhibit, Exhibit 169. I have an
25 email chain that I want you to review if you would.

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1 It's a little bit longer. Maybe we don't have to do the
2 whole thing. Let's kind of focus in on a few things.

3 If you notice, these are emails that have a
4 subject line of a Weekly Report Update. Does that sound
5 familiar to you?

6 A I believe that that's what they used to enter
7 time for the employees.

8 Q Okay. Are those also the same spreadsheets
9 that would have been used to apply the true ups or gross
10 up amounts?

11 A I don't know if it would be the same
12 spreadsheet or a separate spreadsheet.

13 Q Okay. But that is how the true ups or gross
14 ups were communicated from the subsidiaries on up was on
15 a spreadsheet that you would have been included on;
16 right?

17 A Correct.

18 Q Okay. So this is a -- so there is several
19 emails here about -- about the adjustments that you all
20 were making. I want to go to 31 -- page 3155. And if
21 you need more context to what we're going to talk about,
22 I can scroll up to where you want, but I'm trying to
23 save time here.

24 But on 3155 in this exhibit you mention adding
25 some adjustments that you're making. Can you tell us

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1 what you're talking about?

2 A That would have been things that she attached
3 to the spreadsheet, probably pay rate changes. That's
4 my best understanding. I believe that there were
5 employees that had been misclassified based on their
6 position.

7 Q Do you see this email in the same chain from JD
8 Kinsey?

9 A Yes. Reviewing now.

10 Q Does that ring a bell who that is, do you
11 remember him now?

12 A Yes. I do remember JD Kinsey now. I believe
13 he is a -- related to Ken Kinsey.

14 Q Right. And what was -- what was he doing in
15 this -- as regards to payroll?

16 A So JD Kinsey was the payroll person. I forgot
17 when he left. And that's my misunderstanding.

18 Q Okay. And who did he do payroll for?

19 A He, as far as I was aware, was the main payroll
20 person in Puerto Rico. And so he would send -- he would
21 track the hours and then he would send those hours to
22 Five Star and Higher Power.

23 Q Okay. And then what would happen with those
24 reports after Five Star and Higher Power?

25 A I believe that they would do the reviews to see

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1 if anybody was not paid and needed a true up and if
2 there are any employees that had been misapplied the
3 position and if they needed to have their position
4 changed in the system and a rate change with that.

5 Q Okay. So looking at this email now from JD
6 Kinsey on January 9th that spans Bates number 3157 and
7 3158, do you see that he's asking here about how to
8 adjust the pay for folks if they miss even one day
9 because their rates are going to be off? Do you see
10 that?

11 A Yes.

12 Q Okay. Does that refresh your memory that this
13 email chain is also dealing with these true ups for guys
14 that don't work a full week?

15 A Correct.

16 Q So at the top of this 3154, we have an email
17 from you. Would you review this, please?

18 A Okay.

19 Q When you mention that you're working through
20 the changes to get the actual amount owed for each
21 employee, what do you mean?

22 A So this is in January, and year change happens
23 last week of December, first week of January. I believe
24 we had a payroll that straddled the years. And so we
25 had to process a payroll for 2017 that was actually paid

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1 out in 2018. And so we had to be very careful about
2 where the pay was attributed so it would be attached to
3 the appropriate W-2.

4 Q Oh, I see. Okay. In regards to the true ups,
5 did you guys consider that the true up was an amount
6 that was owed?

7 MS. VILLASEÑOR: Objection; form. What
8 do you mean by "owed"?

9 Q (By Mr. Moulton) Go ahead, sir.

10 A Okay. I believe that this was what they were
11 required to have to get to their normal day rate.

12 Q Okay. Well, was it your understanding that the
13 day rate was owed?

14 A It's my understanding that that's what the
15 employees agreed to be paid and so that's what we need
16 to pay them.

17 Q And so why do you think that? What's the basis
18 of your understanding?

19 A Instructions given to me by the executive team.

20 Q Okay. And who would have been involved with
21 that?

22 A I mean, Keith Ellison was the one who dictated
23 the day rate.

24 Q Okay. Who else?

25 A I believe it was Keith was the one who dictated

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1 that and leadership didn't question that.

2 Q Okay. And besides the emails and what we've
3 already talked about with Mr. Beagle setting that policy
4 of the gross ups, was there anyone else in management
5 that was involved in setting that policy that you know
6 of?

7 A Not that I'm aware of.

8 Q Did you ever hear -- did you ever hear anything
9 about whether or not the true ups were really just
10 discretionary bonuses that would be added to the pay
11 rather than something that was owed? Did you hear
12 anything about discretionary bonuses that would be added
13 to the true ups?

14 A Not I recall, no.

15 Q That was never a part of the conversation?

16 A Not that I recall, no.

17 Q Okay. So as far as you understood the true ups
18 were to get the employees up to what they had been
19 promised and what they were owed?

20 A Correct, yes.

21 Q Actually, we're going to skip this one.

22 (Referring to a document on screen
23 share.)

24 Q All right. So this process for making these
25 adjustments, the true ups up to the day rate, that --

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1 did the process for handling them was the same for Cobra
2 and Higher Power; correct?

3 A Correct.

4 Q And the same for Five Star; correct?

5 A Correct.

6 Q In Exhibit 172 we have an email chain that is
7 talking about the weekly update for January 26 with HPE
8 payroll corrections PR; right?

9 MS. VILLASEÑOR: What are you showing,
10 Dave?

11 MR. MOULTON: Oh, I'm sorry. Let's try
12 that again.

13 Q (By Mr. Moulton) Exhibit 172, Mr. Kalman, we
14 have an email chain about the weekly update report for
15 January 26. Do you see that?

16 A Yes.

17 Q Okay. So it was part of your job to review
18 these weekly update reports; right?

19 A I believe that I -- I received them and I
20 inputted the adjustments into Paycom.

21 Q Oh, okay. So you -- you were the one actually
22 putting in the gross ups into Paycom?

23 A No. That was the rate changes that I was
24 making the adjustments to. The gross ups should have
25 been imported by Beth Stone.

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1 Q Okay. Who is Beth Stone?

2 A She was the payroll manager.

3 Q And what company was she with?

4 A She was with Mammoth.

5 Q Okay. So she worked in the same office as you?

6 A Yeah. She was my direct report.

7 Q Okay. So let's take a look at the spreadsheet
8 that's referenced in 172. So we see some -- can you
9 tell us what we're looking at on this January 2nd tab?

10 MR. MOULTON: Oh, and by the way, for the
11 court reporter, this is Exhibit 173. It's a native
12 Excel spreadsheet, it's Mammoth 3149.

13 Q (By Mr. Moulton) All right, sir. So on this
14 Exhibit 173 tab, Corrections for January 22nd, do you
15 recognize this? Do you know what's going on here?

16 A Yes. So it looks like there are many changes
17 to employees who had incorrect rates previously due to
18 incorrect positions and those have been updated. And
19 then there was standby time that was paid, and then
20 adding an employee to Blue Cross/Blue Shield.

21 Q Okay. But this is an example of the types of
22 spreadsheets where you guys would handle any corrections
23 that would need to be made. And this one doesn't look
24 like it has any true ups, but it would be the same sort
25 of spreadsheet where you would put the true ups on here;

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1 correct?

2 MS. VILLASEÑOR: Object to the form. If
3 you want to show him one that you believe what you're
4 talking about. But this is not that.

5 Q (By Mr. Moulton) Sir, is this the type of
6 spreadsheet that you guys would have tracked true ups
7 on?

8 A As far as I am aware, yes.

9 Q Okay. On the corrections needed for January
10 12th tab, can you tell us what this correction is about?

11 A It looks like -- okay. So looks like the
12 employee had requested certain taxes be not taxed, and
13 that was not done during the first payroll and so a
14 correction needed to be issued.

15 Q Okay. Is it -- is there also a correction here
16 for \$1600 for missing two days of standby?

17 A No. That is a test.

18 Q A test. Oh, oh, I see. Okay. Thanks for
19 clarifying that. That's just to -- that's a line just
20 to kind of keep you all organized, if you will?

21 A Correct.

22 Q On January 15th, 2018, this tab, can you
23 explain what's going on here?

24 A Yes. It appears that for a large minority of
25 the people the rate was not accurate and so we had to

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1 make an adjustment. This, again, was probably done due
2 to the employees not being in the right position. And
3 then it looks like for the final employee he was owed
4 overtime that was shorted to him on the given date and
5 that he needed to be paid at his updated rate.

6 Q Okay.

7 A He has two line items on there. So, if you
8 see, there is the Higher Power -- there is one line item
9 where he needs to be changed to the higher rate and then
10 another one where he was shorted hours.

11 Q Got it. Let's look at 183. So this is
12 referencing that January 26 report. Do you see that?

13 A Yes.

14 MR. MOULTON: Okay. We're going to take
15 a look at that January 26 report. And can you see can
16 you see -- and for the court reporter, this is Mammoth
17 3145 native Excel spreadsheet. It's Exhibit 184. It's
18 not marked, but we wanted it attached.

19 Q (By Mr. Moulton) All right. Mr. Kalman, on
20 this tab here, Corrections Needed For January 26, can
21 you tell me what's happening here?

22 A Yes. This would be the true up amounts as
23 discussed previously. Employees who did not work full
24 shifts, full 14 days on site, they would have to have
25 their pay adjusted to make sure they were paid

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1 accurately.

2 Q Okay. For these day rate adjustment amounts,
3 do you recall who it was who would be entering this into
4 the spreadsheet?

5 A Missy would enter that information --

6 Q Okay.

7 A -- or JD.

8 Q Go ahead.

9 A Sorry. It was either Missy or JD.

10 Q Okay. I notice that this column I here, if you
11 look at the cells there is not a calculation there.
12 They are just amounts entered. Do you see that?

13 A Yes.

14 Q Do you know how Missy and JD were putting these
15 numbers in?

16 A I do not.

17 Q You don't know if they had, like, maybe a sheet
18 they would reference to put those numbers in?

19 A I mean, it's entirely possible.

20 Q Okay. But you're not aware of a sheet like
21 that?

22 A Not to my knowledge.

23 Q Okay. So I'm on the January 19th sheet, is
24 that more of the same, the adjustments that need to be
25 made?

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1 A So some of them were -- some of them do appear
2 to be true up adjustments needed, but not all of them.
3 So, for example, the first one looks like it was an
4 inappropriate rate.

5 Q Okay. On the January 12th tab, got more
6 examples; correct?

7 A Correct.

8 Q All right. So what -- I see that you're copied
9 on these reports. What is your role in regards to these
10 correction reports?

11 A Being aware of them, raising any questions that
12 I might have to my director, and to make sure that Beth
13 received them and got them imported into the payroll
14 system.

15 Q We'll look at Exhibit 202. This is a new one.

16 (Exhibit 202 was marked for
17 identification and made a part of the
18 record.)

19 Q Go ahead and take a look at this and we'll
20 scroll up and talk about it.

21 | A Okay. Okay. Okay. Okay. Okay.

22 Q All right. Can you describe to us, what was
23 the problem that was happening that gave rise to this
24 email?

25 A So we had several issues. One of the major

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1 ones that was discussed was the routing and account
2 numbers not being accurate and there being issues with
3 direct deposits going through appropriately. In
4 addition, there are email considerations of employees
5 being paid the wrong position day rate pay and us
6 needing to get that corrected.

7 Q Okay. And Mr. Beagle also brings up on
8 November 17th in the morning, 8:15, there is an issue
9 with -- about the true ups; right?

10 A Correct.

11 Q About calculating how much they should be trued
12 up because they may be shorted if they work less than a
13 full week. Do you see that?

14 A Yes.

15 Q Okay. Were you aware whether or not Mr. Beagle
16 had ever, you know, sat down and calculated what all
17 those gross up amounts should be for the workers?

18 A Not off the top of my head. I wasn't part of
19 that to my knowledge.

20 Q Okay. But you -- when he says that he's doing
21 that right here in the email, does that trigger any
22 memory for you?

23 MS. VILLASEÑOR: Objection; asked and
24 answered.

25 A I -- I see that he says that he's calculating

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1 the gross up now. I may have assisted with that, but
2 I'm not aware that I did.

3 Q (By Mr. Moulton) That's certainly a calculation
4 that you would know how to do; right?

5 A I mean, if I sat down with it I could, yes.

6 Q Right. And what is Mr. Beagle saying to do in
7 this email, November 17th, as you understand it?

8 A So in this he was talking about the routing and
9 account information being incorrect, and to put in the
10 spreadsheet DD corrected, so direct deposit corrected.
11 And then we would generate the employee's new direct
12 deposits that would be sent out to their banks.

13 Q The offer letters, were you part of the
14 decisionmaking about what the offer letter should say?

15 A No.

16 Q Do you recall referencing offer letters?

17 A I received offer letters that were signed and I
18 made sure to document them in the Paycom system. But,
19 otherwise, I did not review them, no.

20 Q Okay. So when you reviewed signed offer
21 letters to document them in the Paycom system what were
22 you doing?

23 A Making sure that they were entered into the
24 right employee's file.

25 Q Okay. Did you have to -- did you have to enter

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1 anything with regard to pay rates?

2 A Yes.

3 Q What would you enter?

4 A What was listed on the offer letter.

5 Q Okay. So if the offer letter had a day rate,
6 would you enter the day rate?

7 A We would enter in whatever the hourly rate for
8 that position was.

9 Q So back on that exhibit like with the charts
10 and the rates, you would enter in the hourly rate that
11 corresponded with the particular day rate?

12 A Correct.

13 (Exhibit 203 was marked for
14 identification and made a part of the
15 record.)

16 Q Let's look at Exhibit 203. So this is an email
17 from you to Shelly Wheeler, who is HR at Higher Power;
18 right?

19 A I am not seeing anything currently.

20 Q Oh, I'm having a rough day today, Alex -- or
21 Mr. Kalman. I'm not sharing my screen when I need to be
22 sharing it.

23 Okay. So No. 203. And this is an email from
24 you to Shelly Wheeler, who is the HR person at Higher
25 Power; correct?

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1 A Correct.

2 Q Okay. Can you tell me why you're sending her
3 all these documents?

4 A Yes. I was often asked to send documents on
5 Jeff's behalf when he was in meetings or otherwise
6 occupied.

7 Q Okay. So you were giving all these, basically,
8 new hire documents over to Ms. Wheeler so she could have
9 them for Higher Power; right?

10 A Correct.

11 Q So these are documents that would have been
12 developed through a process at the -- at your level and
13 then given or assigned to Higher Power; right?

14 A It was not at my level. It was the director
15 came up with the policy documents.

16 Q And by "the director," you mean your boss?

17 A Jeff Beagle.

18 Q Right. So this was -- the offer letters and
19 these documents you see here were developed at the
20 Mammoth Energy level and pushed down to Higher Power;
21 right?

22 A Correct.

23 Q Do you know if -- if offer letters were
24 collected from all employees?

25 A To my knowledge, yes, that was part of our

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1 standard process.

2 Q Okay. On Exhibit 147 we have an email from you
3 to Missy Davis asking about some missing offer letters.
4 Do you see that?

5 A Yes.

6 Q Okay. And what is Missy's response?

7 A She said, "They were existing employees so I
8 didn't have them complete offer letters."

9 Q Okay.

10 A "Daniel Baldwin hasn't left yet."

11 Q Right. So can you say for certain whether or
12 not you had offer letters for every single person on the
13 island?

14 A No, I can't say that for certain.

15 Q In Exhibit 185 we have an email from JD Kinsey
16 to you about entering time.

17 A I am reviewing the email.

18 Q Okay.

19 A Okay. I see that.

20 Q Okay. So JD is asking about two different
21 kinds of employees. He's asking about some employees
22 about how to enter their information into the Paycom and
23 then for other employees how to handle theirs; right?

24 A Correct.

25 Q And the difference would be there is some

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1 employees that are working on the island that have a
2 base salary plus a day rate and there is some other
3 folks who are working under this system we've been
4 talking about, it's hourly system plus the gross ups or
5 true ups; right?

6 MS. VILLASEÑOR: Objection; Form.

7 A So the -- I'm not sure on these specific
8 employees. But it appears that they might be some of
9 the ones that did receive their salary pay in addition
10 to the day rate. The day rate would still be -- so for
11 the salary employees I do believe there was just the day
12 rate entered in directly.

13 Q (By Mr. Moulton) Okay. And for the ones that
14 were on the -- on the hourly system plus true up,
15 they -- they're supposed to be entered just as 16 hours
16 per day worked; right?

17 A Yes, that is my understanding.

18 Q Okay. And this is what you're confirming with
19 JD; right?

20 A Correct.

21 (Exhibit 204 was marked for
22 identification and made a part of the
23 record.)

24 Q I'm going to show you Exhibit 204. Go ahead
25 and look at this. We'll talk about it.

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1 A Okay. So appears Missy was seeing some
2 adjustments that hadn't gone through.

3 Q Okay. And keep on reviewing here. We'll talk
4 about it here in a second.

5 A Okay. I'm good to continue up.

6 | Q Okay.

7 A All right. It sounds like there were employees
8 who had pay issues that needed to be corrected and that
9 Missy and JD were working on those.

10 Q Right. Okay. So I have a question about this.
11 They seem to have divided the labor between themselves.
12 Do you recall that?

13 A Yes, the email states they were dividing labor.

14 Q Right. And so Missy is going to work on the
15 Five Star guys and JD is going to work on Higher Power
16 guys.

17 A Yes.

18 Q Once you had workers inside the PR department,
19 JD or Missy could have worked on them; right?

20 MS. VILLASEÑOR: Objection; form.

21 A I believe so. I would have to review the
22 Paycom setup. It's fairly complicated.

23 Q (By Mr. Moulton) Okay. Well, you're my
24 best -- you're my best source of information on Paycom
25 so I'm going to ask some questions about it. How does

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1 permission work on Paycom?

2 A So admin levels, users can set up new users.
3 The only ones that had admin level to my knowledge were
4 myself, Beth Stone, and Jeff Beagle at the time. There
5 were discussions about not giving us all admin access;
6 however, there was a limitation that would not allow
7 Paycom to let us do the things we needed to do to
8 complete our jobs without that admin access, so that's
9 where that security had to come from.

10 So I was responsible for setting up most of the
11 users. I could dictate the access that managers had and
12 users had based on the type of product that they should
13 be able to see, whether it's payroll or just time off,
14 things like that, and then by specific either
15 departments' employees or other user access groups that
16 were already set up within Paycom. And that's just why
17 I say that without reviewing specifics I couldn't give
18 you an exact list of who could and who couldn't make
19 those adjustments, but it should be fairly easy to
20 review within the Paycom system.

21 Q Got it. So does it make sense for you for
22 Missy to be splitting up the lists so they don't double
23 dip if she was only looking at Five Star?

24 A From my understanding it looks like she only
25 took the Five Star employees and he took the Higher

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1 Power employees. And since Missy was the HR person for
2 Five Star, I didn't see that as unusual.

3 Q And I appreciate that. I hear that, but I'm
4 asking kind of a little different question.

5 A Okay.

6 Q Do you know why she would ask -- why would she
7 need to split up a list if she didn't have access to it?

8 MS. VILLASEÑOR: Objection; form. He
9 can't speculate as to what she's thinking.

10 A So with the -- I mean I think she was offering
11 to be kind, honestly, because she was wanting to do some
12 of the work because she was extremely dedicated.

13 Q (By Mr. Moulton) Okay. So if she had wanted
14 to work on Higher Power guys that's definitely access
15 she could have been given?

16 A Yes, she could have been given that access.

17 Q And looking at this, at least, you're not able
18 to confirm either way whether she, in fact, had that
19 access at this time?

20 A Not without access to the Paycom system.

21 Q Okay. What does the Puerto Rico department
22 mean inside the Paycom system?

23 A Paycom has a lot of variable fields and
24 options. They had full labor allocation suites, so you
25 could have as many departments and subdepartments as

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1 desired. I believe that the Puerto Rico department that
2 was created -- or it may have been a subdepartment. I
3 apologize, I don't remember the full structure.

4 But as far as I was aware it was men, they were
5 a Puerto Rico employee who was on site in Puerto Rico.

6 Q All right. I'm getting an exhibit loaded here.

7 So with that Puerto Rico department would
8 folks -- when guys would go work in Puerto Rico for the
9 workers, they would have to be added to the Puerto Rico
10 department in Paycom; right?

11 A Yes.

12 Q And why would they have to be added to the
13 Puerto Rico department in Paycom?

14 A As I recall it had something to do with the
15 calculated rates calculating the hours based off of 40
16 per week instead of eight-hour days.

17 Q Okay. Did it mean anything as far as access
18 about who could see that information?

19 A I mean, so the user access groups are primarily
20 driven off of departments and other labor allocations.
21 So, yes, certain user access groups certainly could be
22 set up specifically for Puerto Rico.

23 Q Would you have been the person that would have
24 set up those user access groups?

25 A Yes.

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1 Q And for the Puerto Rico department can you
2 recall generally who would have had access to it?

3 A I can't say. I would have to look at it.

4 Q Okay. Where in Paycom would we see that?

5 A So if you go to user options, user access
6 settings, there should be a list of users and their user
7 access group. Paycom could gather that information.
8 But user access groups are separate and are set up
9 separately. So you would have to know which user access
10 group they were on at the time.

11 Q Okay. Let me show you Exhibit 170.

12 A Okay.

13 Q So on this first page can you tell us what
14 we're looking at?

15 A It looks to be a paycheck for Justin Washburn.

16 Q Right. And based on your prior testimony are
17 you able to see, based on looking at the hours that are
18 listed here, how many days he worked in this pay period?

19 A So based off of this it looks like he only had
20 32 hours worked.

21 Q Right. And do you know how many days that
22 would correspond to in Puerto Rico?

23 A Two.

24 Q Right. And based on the rate scale that we
25 looked at earlier in 151, let me pull that up for you to

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1 refresh your memory. We can see that the 37.84 rate
2 corresponds with the 800 a day rate; right?

3 A Correct.

4 Q So if we go back to the pay stub in 170, we can
5 see that 37.84 rate again; right?

6 A Correct.

7 Q And do you know why the 32 hours was split as
8 16 regular and 16 overtime?

9 A Yes. So the normal setup for Paycom is that
10 any hours over eight in day are calculated as overtime,
11 or at least that's how we had it set up. So that's why
12 it would have listed like that.

13 Q Why wouldn't it just put 32 regular?

14 A Because of the setup. So, again, different
15 states and different municipalities have different rules
16 requiring overtime. Some have any hours over 40 within
17 a work week would be considered overtime, while some
18 places have any hours over eight in a day count as
19 overtime.

20 So in this case the time card was set up, at
21 least my assumption is the time card was set up that any
22 hours over eight in a day would count towards overtime.

23 Q Okay. Let's look at his actual time detail
24 report.

25 A Okay.

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1 Q I'm going to scroll down. The pay period we're
2 looking at is June 25th, July 8. So remember those
3 dates. Let's look at them.

4 Go to June 25th. Is there anything about
5 looking at the actual time detail report that refreshes
6 your memory about what you just talked about?

7 A I mean, it looks like 16 hours of fixed regular
8 were added and then 16 hours of fixed overtime were
9 added. I mean --

10 Q If -- go ahead. I'm sorry.

11 A No, it's okay. It looks like this information
12 was added. It's strange that the change report doesn't
13 show who made those changes. But that's the most
14 information I have out of this setup.

15 Q Okay. And the question I had is -- I mean, it
16 shows that fixed capital R means it's supposed to be
17 entered into the regular time in the pay tub; right?

18 A Right. So that should be regular hours.

19 Q Okay. And then this fixed DYR, that's the true
20 up or gross up we've been talking about today; right?

21 A Yes.

22 Q Okay. So let's go back to the pay stub. Does
23 it make sense to you now, looking at this, why some of
24 the hours, or these 16 hours were added in as overtime?

25 A I mean, again, as far as I'm aware, like the

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1 only way that should have come through was if it was
2 added, and it looks like it was added.

3 Q Okay.

4 A So it looks like they must have added in a
5 variable rate overtime, I guess.

6 Q All right. Well, that 37.84 corresponds to the
7 \$800 a day; right?

8 A Correct.

9 Q Right. And he worked two days. It says pay
10 comes out to be, with this true up here, the true up
11 gets him to that day rate level.

12 A Correct.

13 Q And this is an example of how true ups would
14 work in practice; right?

15 MS. VILLASEÑOR: Objection. Form.

16 A I -- I mean, it must be how it worked at some
17 point. I thought that it was a fixed dollar amount that
18 we were adding. I forgot when he must have made that
19 change.

20 Q (By Mr. Moulton) Oh, you mean for, like,
21 specific days, like just put in a day rate amount?

22 A Like a true up dollar amount.

23 Q Oh, okay. Well, isn't that what this 86.40 is?

24 A So that's -- oh, yes, for the current period.
25 I apologize. I thought that was year to date

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1 information. So, yes, that is the day rate, that is the
2 true up.

3 Q Okay. So just -- so you were looking at
4 something else a second ago. So just to confirm --

5 A Correct.

6 Q -- the 8640 for this pay period is the true up
7 that makes the -- that brings up this hourly pay, if you
8 will, up to the day rate amount; right?

9 A Yes, correct.

10 Q For this one here, the next pay stub for Justin
11 Washburn, which is May 14-May 27, you see a plain day
12 rate entered in \$800. Do you know what that was?

13 A I can only hazard a guess, and my guess would
14 be that the employee missed a day that he was supposed
15 to be paid that wasn't entered on a time card or
16 something. And rather than enter into a time card they
17 paid a straight \$800.

18 Q Okay. We may be able to get some information
19 on that from the pay stub -- I mean, from the time
20 detail report; right?

21 A I mean, we would need to know what the error --
22 what date the correction was being made for. But in
23 theory, yes, it should list it there.

24 Q Okay. Let's go look. May 14th to May 27.
25 Does that look like a missed day makeup kind of paycheck

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1 to you or does it look like a normal paycheck?

2 MS. VILLASEÑOR: Objection; form.

3 A It appears the user here has added a \$800 as a
4 fixed dollar amount onto the time card.

5 Q (By Mr. Moulton) Okay. And you were aware that
6 this was being done during the time you're working --
7 that the guys were working in Puerto Rico; right?

8 A I mean, I would not have approved of just
9 adding a fixed dollar amount unless they were the
10 salaried employees who also received a day rate.

11 Q Right. And that's consistent with an email we
12 saw earlier.

13 A Correct.

14 Q Right? Do you recall that?

15 A Yes.

16 Q All right. So looking at this -- at this time
17 detail report for Mr. Washburn, can you tell who it was
18 that was responsible for entering in the amounts that we
19 see here?

20 A Yes. The supervisor approval -- well, no. I
21 take that back. The supervisor approval is for JD
22 Kinsey. We would actually need to look at the audit
23 history report to see who entered that information in.

24 Q Okay. So there's a separate report to see who
25 physically entered these numbers?

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1 A Yes, versus who approved it.

2 Q Okay. So Mr. Kinsey's name here in the
3 supervisor approval, what does that mean?

4 A That means that he reviewed the time card and
5 approved it.

6 Q Okay. And then for the allocation column, what
7 does that mean?

8 A So that is the labor allocation and departments
9 that I was discussing earlier. So we have -- all of our
10 breakouts should be in that allocation section.

11 Q Okay. And looking at this particular
12 allocation are you able to tell who would have had
13 access to this allocation or not?

14 A No. Using this allocation I would not be able
15 to tell which users had access to that.

16 Q Do you know why it says "Hardware clocks" at
17 the top of this document?

18 A So that is the time group. The time group is a
19 field that is filled in for employees for what kind of
20 time cards and approvals they have. And I believe that
21 the decision was made to put them on the hardware clocks
22 simply because I think there was a discussion about
23 maybe rolling out iPads back when we were first
24 initiated this Puerto Rico system.

25 Q Okay. But it's clear now that even though it

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1 may have been set up that way, there was never a
2 hardware clock -- an actual physical clock to track
3 exact hours worked in Puerto Rico; right?

4 A Correct. You would see in and out punches if
5 there was a hardware clock involved.

6 Q Okay. And so for Puerto Rico the process was
7 that supervisors would report who had, basically, shown
8 up for work that day?

9 MS. VILLASEÑOR: Objection to the form.

10 A Again, I knew that the managers were supposed
11 to track the information. Whether or not they did that,
12 I don't know.

13 Q (By Mr. Moulton) Okay. They weren't supposed
14 to be tracking -- or they weren't tracking exact hours
15 worked. They were tracking who worked that day;
16 correct?

17 A Correct.

18 MS. VILLASEÑOR: Objection; form.

19 Q (By Mr. Moulton) Okay. Looking at the top of
20 this time detail report again there is some other
21 information here like about the department and home
22 allocation. And just to be clear, are you able to tell
23 by looking at this screen who or which groups would have
24 had access to whose information in -- in Paycom?

25 A No. Again, I would have to have access to the

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1 specific user access groups, which are not shown on time
2 card information.

3 Q Can you think of a reason why -- let's look --
4 before I do that, so in this Exhibit 170, I'm scrolling
5 down to Mammoth 23, that's the Bates number. And it's a
6 pay stub for Robby Alvear from May -- I'm sorry. April
7 30th to May 13 is the pay period. Do you see that?

8 A Yes.

9 Q Okay. We see here another instance where it's
10 just a straight day rate amount entered here. Do you
11 see that?

12 A Yes.

13 Q Okay. This is a different type. It's not the
14 gross up or true up type of day rate adjustment. This
15 is just plain day rates entered into the system;
16 correct?

17 A Correct.

18 Q Okay. Let's take a look at the time detail
19 report. So it's the pay period April 30th to May 13th,
20 so it looks like it's the first one. April 30th to May
21 13th. Can you see here that there are eight days
22 entered at \$800 per day?

23 A Yes.

24 Q Okay. And this was approved by JD Kinsey;
25 right?

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1 A That's Correct.

2 Q Is JD Kinsey when he's entering this, is he
3 doing it wrong or is there something with Paycom that
4 made it difficult for him to be able to do it in, like,
5 with the 16th that we're seeing down here below? Do you
6 know anything about this?

7 A I do not recall anything with regards to this.
8 I would -- I would not have suggested using the 800 or
9 the fixed dollar amount.

10 Q Why not?

11 A Well, because then we're just paying them day
12 rates and that's against FSLA standards as far as I'm
13 aware.

14 Q Oh, I see. Okay. Did you review -- with the
15 true ups that were done that we see, did you view that
16 as being a way of paying day rates or did you do it
17 differently?

18 A Are you asking for my professional opinion?

19 Q Yes.

20 A My professional opinion is yes, they were
21 paying day rates and they were finding a way around it.

22 Q Okay. And why do you feel that way?

23 A Because Keith said that this is what we were
24 paying them as day rates, and then we were required to
25 find a way around that.

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1 Q Okay. So by finding a way around, you're
2 talking about coming up with this hourly system plus
3 these true ups that end up paying them their day rates?

4 A Yes.

5 Q Okay. I'm going to show you a document -- or
6 Exhibit 205.

(Exhibit 205 was marked for identification and made a part of the record.)

10 Q We've got an email chain here. Go ahead and
11 review this and let's scroll up again.

12 A Okay. Okay. Okay.

13 Q So I want to ask you about Paycom. I know I've
14 asked you several questions.

15 A Okay.

16 Q Can you tell me what is going on here? It
17 looks like you made a change to change the access. Do
18 you agree with that?

19 A Yes.

20 | Q Okay. What's going on? Can you explain?

21 A So it seems like there are some employees that
22 JD didn't have access to. They may have been
23 transferred between departments. And I do agree that
24 departments can be used as the user access groups. So
25 it seems like that is what is appearing here and that we

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1 were making sure that during that transition from Puerto
2 Rico to not Puerto Rico that they still got all of the
3 hours that they were supposed to have in.

4 Q Okay. And just to be clear, when we're talking
5 about moving departments, we're talking about software
6 inside this Paycom; right? We're not talking about
7 actually putting different people in a different part of
8 the company; correct?

9 A Correct. It was a way for us to represent when
10 the employee was on or off the island.

11 Q Okay. So it looks like Missy was able to move
12 some folks that had been in -- that had been visible to
13 JD Kinsey on into her Five Star group; right?

14 A So she probably changed the labor allocation to
15 show that those employees were no longer in Puerto Rico.
16 And if we had set up that user access group for JD to
17 only see Puerto Rico employees, that would explain why
18 he was no longer able to see them.

19 Q Okay. So the next email when you moved -- you
20 moved them back into the PR department and he was able
21 to see them again?

22 A Correct.

23 Q So the PR department is accessible by JD Kinsey
24 and also Missy Davis?

25 A Yes. I mean, so, again, to clarify, we could

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1 filter it down to where Missy could only see Puerto Rico
2 employees in Five Star or only Puerto Rico employees.
3 So we can reduce the access by quite a bit. So in
4 theory, yes. But I can't say for certain without
5 looking at the user access groups.

6 Q Okay. But based on JD Kinsey's email, it sure
7 looks like Missy was able to take folks out of what used
8 to be visible to JD Kinsey and into only hers.

9 A Correct.

10 MS. VILLASEÑOR: Objection to form.

11 Q (By Mr. Moulton) Is that right?

12 A It appears so, yes.

13 MR. MOULTON: I will pass the witness.

14 MS. VILLASEÑOR: All right. Let me take
15 five minutes. I need to use the restroom.

16 MR. MOULTON: Okay.

17 MS. VILLASEÑOR: All right. Thank you.

18 VIDEO OPERATOR: Off the record.

19 (A break was had from 12:17 to 12:36
20 p.m.)

21 VIDEO OPERATOR: Back on.

22 EXAMINATION

23 BY MS. VILLASEÑOR:

24 Q Good afternoon, Mr. Kalman. My name is Erin
25 Villaseñor. And as I mentioned earlier, I represent the

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1 Defendants in this case, Mammoth and Higher Power.

2 A Um-hum, yes.

3 Q I want to go back to Exhibit 131. And I'll
4 share my screen with you. Mr. Moulton showed you a
5 little bit earlier.

6 Can you see what's on my screen, sir?

7 A Yes.

8 Q If you recall, Exhibit 131 is an email that you
9 are cc'ed on, an email chain that you are cc'ed on,
10 rather, regarding discussions with outside counsel
11 regarding the pay structure in Puerto Rico; is that
12 correct?

13 A Correct.

14 Q Okay. And I believe you testified earlier when
15 Mr. Moulton, that you were not directly involved with
16 any conversations with outside counsel regarding the pay
17 structure; correct?

18 A Correct.

19 Q And your involvement, as we understand it, is
20 that Mr. Beagle -- who is your supervisor; correct?

21 A Correct.

22 Q -- from time to time would get your input on
23 things regarding the pay structure. Is that fair?

24 A Yes.

25 Q Okay. You didn't approve the final pay

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1 structure, did you?

2 A No.

3 Q And you testified earlier that you were not
4 part of the drafting of the offer letters.

5 A Correct.

6 Q You didn't attend orientation for Five Star or
7 for Higher Power for the Puerto Rico employees, did you?

8 A Not for the Puerto Rico employees, no.

9 Q And you do not know what was conveyed to them
10 regarding the way they would be paid at these
11 orientations, do you?

12 A No.

13 Q You don't even recall any of the details about
14 what was conveyed to them in each of their offer
15 letters, do you?

16 MR. MOULTON: Objection; form.

17 A No.

18 Q (By Ms. Villaseñor) You weren't part of the
19 decision to pay based on a 16-hour work day; correct?

20 A Correct.

21 Q You testified earlier that the hourly rates for
22 the employees in Puerto Rico were based on a day rate
23 set by Mr. Ellison; is that correct?

24 A Correct.

25 Q But you also testified that they were based on

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1 hours work; correct?

2 A Correct.

3 Q In your word, that management conveyed and the
4 employees knew that they were being paid hourly based on
5 hours work; correct?

6 MR. MOULTON: Objection; form.

7 A Correct.

8 Q (By Ms. Villaseñor) And you're aware that
9 management told them that these day rates that were set
10 by Mr. Ellison before the PREPA contract was signed,
11 those -- that was the type of pay that they could expect
12 to receive per day; correct?

13 MR. MOULTON: Objection; form.

14 A I am not aware of discussions that were had
15 between them.

16 Q (By Ms. Villaseñor) So you don't know one way
17 or the other whether employees were told these so-called
18 day rates was the amount that an employee could expect
19 to receive per day for 16 hours of work in Puerto Rico?

20 MR. MOULTON: Objection; form.

21 A Correct. That is correct.

22 Q (By Ms. Villaseñor) We saw earlier in some of
23 emails Mr. Moulton showed you that Mr. Beagle asked you
24 questions about how to set up what was referred to
25 earlier as a true up system. Do you recall that?

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1 A Yes.

2 Q And you were assisting him because you are the
3 expert in Paycom. Fair?

4 A Yes.

5 Q And so he wanted your input about how he could
6 actually enter the true ups. Fair?

7 MR. MOULTON: Objection; form.

8 A Correct. He asked the best way to get them
9 into the system.

10 Q (By Ms. Villaseñor) And in terms of how the
11 final calculations were done or when they were done or
12 why they were done, that would be a decision that
13 Mr. Beagle made; right?

14 MR. MOULTON: Objection; form.

15 A Correct.

16 Q (By Ms. Villaseñor) And you weren't part of
17 any discussions about the details of the so-called true
18 up payments; right?

19 MR. MOULTON: Objection; form.

20 A I helped with some of the processing of them.
21 I was part of those emails. But I was not the one who
22 was dictating the amounts, no.

23 Q (By Ms. Villaseñor) And on the time detail
24 reports where we saw that there were some so-called
25 entries as day rates, but there wasn't even an

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1 indication of who actually entered them. Is that fair?

2 A Not on that form. That information could be
3 found within the time card system.

4 Q Okay. But is it fair to say that things were
5 being done in Paycom that you didn't know about?

6 MR. MOULTON: Objection; form.

7 A Correct. I am not aware of all the changes
8 that took place in the Paycom system.

9 Q (By Ms. Villaseñor) And you weren't approving
10 the true up entries or the straight day rate entries.
11 Fair?

12 A Correct, I was not.

13 Q And you don't know the details of when or for
14 whom or why certain entries were done on certain days.
15 Fair?

16 MR. MOULTON: Objection; form.

17 A That is accurate.

18 Q (By Ms. Villaseñor) With regard to the true
19 ups, you testified earlier that you were probably part
20 of the implementation and in the decisionmaking process
21 regarding true ups. But isn't it true that you were
22 really just part of implementing ways to get certain
23 entries into Paycom?

24 MR. MOULTON: Objection; form.

25 A I assisted Jeff to make sure that the

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1 calculations that were going seemed accurate to me. I
2 verified them. But he was the one that made those
3 calculations, yes.

4 Q (By Ms. Villaseñor) And sitting here today you
5 don't even know what the final calculations were or
6 under what circumstances they were calculated for;
7 correct?

8 MR. MOULTON: Objection; form.

9 A I am unsure the specifics of any given
10 employee's pay, correct.

11 Q (By Ms. Villaseñor) And for the gross up
12 spreadsheets, as Mr. Moulton calls them, the true up
13 spreadsheet, you don't know one way or the other
14 whether each of those entries was actually entered into
15 Paycom; correct?

16 A All of those entries should have been entered
17 into Paycom, as they were given to us by Higher Power,
18 Five Star, and those would have been entered by Beth
19 Stone.

20 Q Okay. And do you know one way or the other
21 whether Beth Stone entered all of those?

22 A It's been three years. I can't say for
23 certain. But I know Beth Stone is a personal of
24 integrity and honor and would enter that information
25 accurately if she was asked to.

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1 Q And for each of those spreadsheets, management
2 had to sign off on whether to give a true up; is that
3 correct?

4 MR. MOULTON: Objection; form.

5 A I am not sure. By the time those came to me I
6 would make sure Beth had them, that they got entered in,
7 and that they signed off on the final payroll numbers.

8 Q (By Ms. Villaseñor) Okay. So there may have
9 been some decisions or iterations of this spreadsheet
10 before it got to you?

11 A Absolutely.

12 Q Certainly, if Mr. Beagle, your boss, told you
13 not to enter into (sic.) one of these day rate entries
14 or these true up entries as Mr. Moulton refers to them,
15 you wouldn't have done it; right?

16 MR. MOULTON: Objection; form.

17 A Correct.

18 Q (By Ms. Villaseñor) Same for Mr. Kinsey, if he
19 told you not to enter into a certain true up or day rate
20 entry, you wouldn't have done it; correct?

21 MR. MOULTON: Objection; form.

22 A I would have verified with Jeff first.

23 Q (By Ms. Villaseñor) Right. The buck stops --
24 the buck stops with Jeff; right?

25 A Yes. He was my direct supervisor.

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1 Q You said earlier that you would not have
2 approved a fixed dollar rate day entry. Is that true?

3 A For an hourly employee, correct.

4 Q Do you know who would have approved that entry?

5 A It must have been somebody in the executive
6 team. On the specific time sheet it was JD Kinsey who
7 was the approver on the time card.

8 Q But he would have had to have approval from
9 somebody on the executive team. Is that what you're
10 saying?

11 MR. MOULTON: Objection to form.

12 A That is my understanding, yes.

13 Q (By Ms. Villaseñor) And that would have been
14 perhaps an entry that was made at their discretion.
15 Fair?

16 A Correct.

17 MR. MOULTON: Objection; form.

18 Q (By Ms. Villaseñor) And you don't know all of
19 the reasons it would have been made at their discretion,
20 do you?

21 A No.

22 MR. MOULTON: Form.

23 Q (By Ms. Villaseñor) Earlier you testified that
24 it's your professional opinion that the earning
25 statements and the time detail report that Mr. Moulton

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1 showed you reflected that Higher Power was paying a day
2 rate. Is that fair?

3 MR. MOULTON: Objection; form.

4 A Yes. Yes.

5 Q (By Ms. Villaseñor) Okay. But in all of your
6 discussions that we've seen in the emails today,
7 including your boss, Mr. Beagle, was asking you, you
8 know, how you would calculate overtime and how you would
9 come up with a true up if an employee didn't work the
10 full seven days, you never said anything about, Hey,
11 this looks like we're paying a day rate?

12 MR. MOULTON: Objection; form.

13 A We had many conversations in person and there
14 were a lot of discussions about the best way to make
15 sure that we limit our legal liability. And there were
16 discussions that took place regarding that, yes.

17 Q (By Ms. Villaseñor) Okay. And so was it your
18 understanding that Mr. Beagle had spoken with outside
19 counsel and gotten an opinion that the way the final
20 practice was implemented was legal. That's your
21 understanding; right?

22 MR. MOULTON: Objection; form.

23 A My understanding was that the original process
24 that we had in place had been at least reviewed or
25 suggested by a lawyer. I'm not sure on the details,

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1 though.

2 Q (By Ms. Villaseñor) And so correct me if I am
3 wrong, but as an HR generalist or HR supervisor, you
4 wouldn't have continued to stay in that role if you
5 thought that the way they were paying employees was
6 illegal; right?

7 MR. MOULTON: Objection; form.

8 A I wouldn't have stayed with a company that was
9 openly paying their employees illegally, no.

10 Q (By Ms. Villaseñor) Okay. You have no legal
11 background; correct?

12 A Correct.

13 MR. MOULTON: Objection.

14 Q (By Ms. Villaseñor) And you weren't even part
15 of the discussions with Mr. Beagle and Mr. Broussard of
16 the executive team about the legalities of the pay
17 structure or how it was implemented. Fair?

18 MR. MOULTON: Objection; form.

19 A That is correct.

20 Q (By Ms. Villaseñor) I believe the last exhibit
21 Mr. Moulton showed you, Exhibit 205, which I don't have,
22 but I believe you may recall this, a situation where
23 Missy had the ability in Paycom to allow JD certain
24 access. Did she have that or were you the one approving
25 who had access in Paycom?

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MR. MOULTON: Objection; form.

A I do not believe that Missy had direct access over the employees JD could or could not see. I believe that the user access group was driven off of the Puerto Rico department field within the Paycom system and that Missy had access to make changes to that field.

Q (By Ms. Villaseñor) When Mr. Beagle consulted you about the pay structure for the so-called true ups, you testified that, you know, it wasn't your final decision and -- is that true, it wasn't your final decision? He was just trying to see what you thought about it?

MR. MOULTON: Objection; form.

A With regards to the true up or --

Q (By Ms. Villaseñor) We'll start with the true ups. You testified that while Mr. Beagle may have asked you about, you know, how you could make it work in Paycom, that wasn't really your call as to how it should be done. If Mr. Beagle told you to do it one way or the other, you would have done it: correct?

A Correct. I proposed options and let him go with the one that he decided on.

Q Right. And you certainly wouldn't have -- well, it sounds like you are a straight-up guy. You wouldn't have implemented something that was -- that you

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1 thought at the time was illegal. Fair?

2 MR. MOULTON: Objection; form.

3 A That is correct.

4 Q (By Ms. Villaseñor) When you emailed the offer
5 letters on behalf of Mr. Beagle, I believe you testified
6 earlier that you weren't involved in the offer letters,
7 but at that particular instance you were just sending
8 Mr. Beagle his time up. Is that fair?

9 A So the only way that I was off -- like in
10 process of the offer letters was in receiving them and
11 making sure they were filed away in documentation. I
12 provided documents to Shelly, but they were already in
13 our database that Jeff had created.

14 Q And when you sent them to Shelly you
15 specifically pointed out that these employees in Puerto
16 Rico were going to be paid hourly plus overtime; right?

17 A Correct.

18 MR. MOULTON: Objection; form.

19 A Yes.

20 Q (By Ms. Villaseñor) And although -- you didn't
21 state this in your email, but although there are
22 sometimes would have been day rate entries or true ups,
23 those would have been issues decided by upper
24 management?

25 MR. MOULTON: Objection; form.

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1 A Uh, correct.

2 Q (By Ms. Villaseñor) On a case-by-case basis;
3 correct?

4 MR. MOULTON: Objection; form.

5 A I mean, any payroll adjustments had to be
6 approved by management.

7 Q (By Ms. Villaseñor) Okay.

8 MS. VILLASEÑOR: David, do you know what
9 exhibit we're on?

10 MR. MOULTON: I finished with 205. So
11 you will be on 206 if we're doing a new one.

12 (Exhibit 206 was marked for
13 identification and made a part of the
14 record.)

15 Q (By Ms. Villaseñor) Okay. I'm going to show
16 you what we'll mark as Exhibit 206. And Exhibit 206
17 bears the beginning Bates label Mammoth 003593.

18 MR. MOULTON: Oh, hey, before you do
19 that, I think we already used this one. Can't we just
20 use the same one?

21 MS. VILLASEÑOR: Did we -- did we use it?

22 MR. MOULTON: Yeah, I'm pretty sure.
23 Hold on. I used it today.

24 MS. VILLASEÑOR: I think you used a
25 different version.

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1 MR. MOULTON: Oh, really? Okay. Go
2 ahead.

3 MS. VILLASEÑOR: If it's the same
4 version, oh well. We'll have two.

5 MR. MOULTON: Yeah, I'm pretty sure this
6 is exactly the same one.

7 MS. VILLASEÑOR: Okay.

8 Q (By Ms. Villaseñor) Can you see Exhibit 206,
9 Mr. Kalman?

10 A Yes.

11 Q Okay. And I'm not sure if this is the same one
12 we looked at earlier, but this is where you send offer
13 letters -- these are not attached here -- but to Shelly
14 Wheeler on October 24th, 2017. Do you see that?

15 A Correct, yes.

16 Q Okay. And then you specifically point out to
17 her that the rate of pay does not equal the day rate via
18 straight time, but factors in overtime rates and the
19 calculation per week; correct?

20 A **Correct.**

21 Q Okay. And are those your words or
22 Mr. Beagle's?

23 A Um, those are my words.

24 Q You've heard -- well, let me back up. Earlier
25 you testified that the so-called day rate in

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1 Mr. Ellison's very early email in October 2017 were the
2 day rates that were conveyed to the various employees in
3 Puerto Rico; correct?

4 A Yes. I believe that the day rates that Keith
5 listed in his email were what was communicated to
6 employees.

7 Q But you know sitting here today that employees
8 were told in the offer letters that you sent around --
9 and you've also heard from your boss, Mr. Beagle, that
10 they were -- and as you previously conveyed in the email
11 we just looked at, that these were rates that employees
12 could expect to receive if they worked their full
13 16-hour shifts for seven days; right?

14 MR. MOULTON: Objection; form.

15 A It was my understanding that if they worked a
16 day they would receive that based on 16 hours.

17 Q (By Ms. Villaseñor) Okay. But -- and you have
18 seen multiple instances where the employee receives more
19 than that amount; right? So it's really just a target
20 rate; correct?

21 MR. MOULTON: Objection; form.

22 A I guess I don't see where they got paid more
23 than their day rate, other than like the variance of 40
24 cents.

25 Q (By Ms. Villaseñor) Right. Variance of 40

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1 cents, I mean, it's still -- they are not being paid
2 that amount per day; correct?

3 MR. MOULTON: Objection; form.

4 Q (By Ms. Villaseñor) I mean, the 40 cents comes
5 from somewhere.

6 MR. MOULTON: Objection; form.

7 A That is accurate.

8 Q (By Ms. Villaseñor) So sitting here today
9 you'd agree with me that what Mr. Moulton calls
10 Mr. Ellison's day rates are really just target amounts
11 that employees could expect to be paid?

12 MR. MOULTON: Objection; form.

13 A Yes.

14 Q (By Ms. Villaseñor) Earlier you testified that
15 my firm -- or I'm sorry -- Mr. Layton had offered my
16 firm to represent you for the purposes of this
17 deposition. Is that true?

18 A He offered legal representation. He did not
19 give specifics.

20 Q Okay. But you refused that; right?

21 A Correct.

22 Q And you've refused to really even speak with
23 Mr. Layton or the legal representation he offered;
24 right?

25 MR. MOULTON: Objection; form.

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1 A Yes. I was concerned, since I had received a
2 cease and desist not to talk to Mammoth, that I
3 shouldn't talk to Mammoth.

4 Q (By Ms. Villaseñor) I understand that. And
5 the reason why you received this cease and desist, as
6 understand it, is that you were terminated; correct?

7 A Well, I was laid off and then I was later told
8 that I had violated the agreements of my severance.

9 Q And in that letter you received in that cease
10 and desist letter, did Mammoth threaten to sue you?

11 A No. That came later after I had discussed
12 legal options with them, and they said that any suit
13 with absolutely follow with a countersuit.

14 Q So is it fair to say that you don't really like
15 Mammoth?

16 MR. MOULTON: Objection; form.

17 A That is fair to say.

18 Q (By Ms. Villaseñor) And so in all the emails
19 that we've reviewed in this case, that you've reviewed
20 in this deposition, you never point out that anything is
21 wrong with the pay structure that you're in charge of
22 implementing in Paycom or that anything is wrong with
23 the pay structure as you've been asked to give your
24 input on, even though it wasn't your final decision, or
25 anything else about the way the pay structure may be an

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1 improper day rate, you never said anything about
2 anything being improper or illegal until sitting here
3 today. Is that fair?

4 MR. MOULTON: Objection; form.

5 A It is correct I did not put any of that into an
6 email.

7 Q (By Ms. Villaseñor) And you never said
8 anything about it either, did you?

9 MR. MOULTON: Object to form.

10 A I voiced my concern with Jeff asking how we
11 were going to make this legal.

12 Q (By Ms. Villaseñor) And he told you, I spoke
13 with Mr. Broussard, our legal counsel; correct?

14 MR. MOULTON: Objection; form.

15 A Yes.

16 Q (By Ms. Villaseñor) And you trusted
17 Mr. Beagle; correct?

18 A Yes.

19 Q And you trusted he would -- he would do the
20 right thing and would do their best to do anything that
21 was the right thing; correct?

22 A **Correct.**

23 Q Okay. So the first time that you've really
24 conveyed that anything was wrong is after Mammoth
25 threatened to sue you --

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1 MR. MOULTON: Objection.

2 Q (By Ms. Villaseñor) -- and in this deposition;
3 correct?

4 MR. MOULTON: Objection; form.

5 A Correct.

6 MS. VILLASEÑOR: Pass the witness.

7 RE-EXAMINATION

8 BY MR. MOULTON:

9 Q All right. Mr. Kalman, I think you were saying
10 with Ms. Villaseñor that it was your understanding that
11 Mr. Beagle would be involved in a -- in approving
12 whether or not gross ups or true ups would be paid. Is
13 that your understanding?

14 A It is my understanding that management would be
15 involved in that approval process.

16 Q And by "management," who do you mean?

17 A I mean it would be someone of Jeff's level or
18 above. So Jeff, Ken Kinsey, Keith.

19 Q Okay. Do you recall any specific instances
20 where a true up or a gross up wasn't paid?

21 A Not to my knowledge.

22 Q So you don't recall Mr. Beagle or Mr. Ellison
23 or Mr. -- Mr. Kinsey, any of the executives that you
24 mentioned a minute ago ever disapproving a gross up or a
25 true up?

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1 A Not to my knowledge.

2 COURT REPORTER: Mr. Moulton, five
3 minutes on the video.

4 MR. MOULTON: Okay. I think I can do
5 another question and be done.

6 (A document was displayed.)

7 Q (By Mr. Moulton) Mr. Kalman, I kind of refresh
8 your memory here on Exhibit 201.

9 A Yes.

10 Q Okay. So -- and I realize it's up to
11 Mr. Beagle to set the payroll policy; correct?

12 A Correct.

13 Q And he's setting the payroll policy that's been
14 applied to all the Cobra -- to Cobra and its
15 subsidiaries, including Higher Power and Five Star;
16 right?

17 A Yes.

18 Q And he asked for your opinion about the true up
19 system; right?

20 A Correct.

21 Q And you expressed to him that even -- and we
22 realize you're not an FLSA lawyer or a wage and hour
23 lawyer. But you expressed to him that you had a concern
24 about how to calculate the overtime with that system;
25 right?

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1 A Correct.

2 Q Okay. Did he -- did he ever tell you that
3 Mr. Broussard or any other lawyer had approved the gross
4 up system?

5 A I think the most I can say that I ever heard
6 was that we have a plan that we're going to make work.

7 Q Okay.

8 A But I can't say --

9 Q Go ahead.

10 A I just -- I can't say specifically. I do not
11 recall.

12 Q All right. So you're -- and based on what
13 Ms. Villaseñor asked you, I gather what you're saying is
14 after it was explained to you that the -- that the
15 company is going to be paying these hourly rates with
16 overtime, plus the gross up, you thought that that --
17 because there is overtime included in that, that that
18 could be right?

19 A Yes.

20 Q But because you're not an expert on legal
21 matters, you don't really know if that's okay or not; is
22 that right?

23 A That is accurate.

24 Q Okay. So it is true, then, that you were given
25 a color -- an explanation that satisfied your concern

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1 that came from someone you trust, like Mr. Beagle;
2 right?

3 A Yes.

4 MR. MOULTON: I will pass the witness.

5 RE-EXAMINATION

6 BY MS. VILLASEÑOR:

7 Q Just a few more questions, Mr. Kalman. Thank
8 you for your time today.

9 When Mr. Moulton was just asking you if you had
10 knowledge of anyone from the executive team, like
11 Mr. Broussard or Mr. Kinsey or Mr. Ellison disapproving
12 a true up --

13 MR. MOULTON: Objection; form.

14 MS. VILLASEÑOR: I'm not done with my
15 question.

16 MR. MOULTON: Well, Mr. Ellison is not
17 part of the executive team. I mean, there's already a
18 problem with it. I'm sorry. I don't mean to interrupt
19 you.

20 MS. VILLASEÑOR: Okay. I'll rephrase.

21 MR. MOULTON: Go ahead.

22 Q (By Ms. Villaseñor) When Mr. Moulton was asking
23 you if you were aware of anyone in a position above you,
24 like Mr. Beagle or Mr. Ellison or Mr. Kinsey
25 disapproving a true up or day rate entry, you said "not

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1 to my knowledge." Is that fair?

2 A Yes.

3 Q Okay. And is it not to your knowledge or you
4 just don't know whether they did or they didn't?

5 A I have no knowledge of whether or not they had.
6 As has been discussed, the Excel spreadsheet changed
7 hands between people before it got to the Payroll
8 Department, and by the time it got to the Payroll
9 Department it was approved.

10 Q Right. And I believe you told me earlier that
11 in between these various iterations somebody like
12 Mr. Beagle or Mr. Kinsey or Mr. Ellison would have been
13 approving or disapproving these true ups or day rate
14 entries; correct?

15 A Correct.

16 MR. MOULTON: Objection; form.

17 A Yes.

18 MS. VILLASEÑOR: Thank you, sir. Thank
19 you for your time today. Pass the witness.

20 FURTHER RE-EXAMINATION

21 BY MR. MOULTON:

22 Q All right. Mr. Kalman, with this exchange
23 happening before, the exchange you're talking about with
24 Ms. Villaseñor right now with these spreadsheets, you're
25 saying these were shuffled around before they ever got

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1 to you?

2 A Right. Like they would -- Missy and JD or
3 whomever was sending them would, as far as I understood,
4 get approval before sending them to Payroll.

5 Q Okay. So they would have sent -- are you
6 saying that you know they were sent to someone like
7 Mr. Beagle or Mr. Ellison before they got to you?

8 A I mean, that was my understanding, yes.

9 Q Okay. All right. So by the time it got to you
10 it was time just to pay it.

11 A Correct.

12 Q Okay. But as far as your memory of any of
13 this, you were never aware specifically of any time
14 where any of these executives had disapproved a gross up
15 or a true up; is that right?

16 A Not to my knowledge, no.

17 Q Okay. But you're saying that it could have
18 happened but you're just -- you wouldn't necessarily
19 know.

20 A Right, I would not have been aware.

21 MR. MOULTON: Okay. Pass the witness.

22 MS. VILLASEÑOR: No further questions.
23 We will reserve for trial.

24 MR. MOULTON: All right. Thank you,
25 Mr. Kalman, you are done today.

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1 MS. VILLASEÑOR: Thank you.

2 VIDEO OPERATOR: Off the record.

3 COURT REPORTER: All right. Before you
4 disconnect would you like to state your transcript
5 orders on the record, please?

6 VIDEO OPERATOR: And/or video.

7 COURT REPORTER: And the video.

8 MR. MOULTON: Sure. And before we go,
9 Mr. Kalman, because you are a witness you have the right
10 to review your own transcript. And so I'm just letting
11 you know this, that you can tell the court reporter if
12 you would like a copy for yourself to review. You are
13 certainly -- that is your right to do. So if you want
14 to do that, you should let her know.

15 THE WITNESS: Okay. Thank you.

16 MR. MOULTON: And, ma'am, Ms. Bloye, we
17 will order the standard, like electronic package. For
18 video we'll do sync.

19 COURT REPORTER: Okay. Thank you.

20 MS. VILLASEÑOR: And then for defendants
21 I think we've just got the standard order. You can ask
22 Anthony Arteaga at my firm if you don't have it.

23 COURT REPORTER: All right. Very good.

24 (Deposition concluded at 1:13 p.m.)

25 (Signature of the witness was waived.)

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FRANCISCO CANTU and NORBERTO ELIZONDO, individually and on behalf of all others similarly situated, Plaintiffs, -vs- MAMMOTH ENERGY SERVICES, INC. d/b/a, COBRA ENERGY and HIGHER POWER ELECTRICAL, LLC, Defendants. § CIV A. NO: 5:19-cv-00615 § JURY TRIAL DEMANDED § CLASS/COLLECTIVE ACTION § PURSUANT TO 29 U.S.C. § 216(b)/ § FED. R. CIV. P.23 § § § § § §

REPORTER'S CERTIFICATION
DEPOSITION OF ALEXANDER NEIL KALMAN
April 21, 2022

I, Trena K. Bloye, Certified Shorthand Reporter within and for the State of Oklahoma, certify to the following:

That the witness, ALEXANDER NEIL KALMAN, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the witness chose to waive his right to read and sign the deposition;

That the amount of time used by each party at the deposition is as follows:

DAVID I. MOULTON 2:32

ERIN VILLASEÑOR 0:27

That pursuant to information given to the deposition officer

ALEXANDER NEIL KALMAN - April 21, 2022

1 at the time said testimony was taken, the following
2 includes counsel for all parties of record:

3 DAVID I. MOULTON, Attorney for Plaintiffs

4 ERIN VILLASEÑOR, Attorney for Defendants

5 I further certify that I am neither counsel for,
6 related to, nor employed by any of the parties or
7 attorneys in the action in which this proceeding was
8 taken, and further that I am not financially or
9 otherwise interested in the outcome of the action.

10 Further certification requirements pursuant to Rule
11 203 of TRCP will be certified to after they have
12 occurred.

13 Certified to by me this 26th day of April, 2022.

14
15
16
17
18
19 _____
20 Trena K. Bloye
21 #1522 CSR for the State of Oklahoma
22 Good To Go Process Service
Firm Registration No. 62
1225 North Loop West, Suite 327
Houston, Texas 77008
713-351-7061
23
24
25

ALEXANDER NEIL KALMAN - April 21, 20221 FURTHER CERTIFICATION UNDER RULE 203 TRCP
23 The original deposition was/was not returned to the
4 deposition officer on _____;5 If returned, the attached Changes and Signature page
6 contains any changes and the reasons therefor;7 If returned, the original deposition was delivered to
8 DAVID I. MOULTON, Custodial Attorney;9 That \$ _____ is the deposition officer's charges to
10 the Plaintiffs for preparing the original deposition
11 transcript and any copies of exhibits;12 That the deposition was delivered in accordance with
13 Rule 203.3, and that a copy of this certificate was
14 served on all parties shown herein on and filed with the
15 Clerk.

16 Certified to by me this 26th day of April, 2022.

23 Good To Go Process Service
24 Firm Registration No. 62
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25 Houston, Texas 77008
713-351-7061